



2004-0034180

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CITY OF YUBA CITY

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YUBA CITY, CA 95993

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**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF YUBA CITY AND
HARTER PACKING COMPANY AND BROWN YUBA CITY, LLC**

**RELATIVE TO THE DEVELOPMENT KNOWN AS
HARTER SPECIFIC PLAN - YUBA CITY MARKETPLACE**

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DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF YUBA CITY AND
HARTER PACKING COMPANY AND BROWN YUBA CITY, LLC
RELATIVE TO THE DEVELOPMENT KNOWN AS
HARTER SPECIFIC PLAN – YUBA CITY MARKETPLACE

This Development Agreement is entered into this 2nd day of November 2004, by and between the City of Yuba City, a municipal corporation ("City"), and Harter Packing Company, LLC, a California Limited Liability Company ("Harter") and Brown Yuba City, L.L.C., an California Limited Liability Company ("Brown"), hereinafter collectively referred to as "Developer," pursuant to the authority of Government Code section 65864, et seq.

Recitals

1. Authorization. To strengthen the public planning process and encourage private participation in comprehensive planning, the Legislature of the State of California adopted Government Code section 65864 et seq. ("Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property.
2. Property. The subject of this Agreement is the development of those certain parcels of land, consisting of approximately 180 acres located in the City of Yuba City as described in Exhibit A (hereinafter the "Property"), attached hereto and incorporated herein by this reference. Harter represents that it owns in fee approximately 149 acres of the Property as more particularly described and shown in Exhibit B attached hereto and by this reference incorporated herein (hereinafter the "Harter Property"). Brown represents that it owns in fee approximately 31 acres of the Property on which the Yuba City Marketplace project will be developed as more particularly described and shown in Exhibit C attached hereto and by this reference incorporated herein (hereinafter the "Marketplace Property"). The Property, the Harter Property, and the Marketplace Property are shown on Exhibit D attached hereto and by this reference incorporated herein.
3. Project Description. Developer intends to develop the Property for mixed uses such as 33 acres of single family residential; 9 acres of multi-family residential; 6 acres for park/water tank; 68 acres of business park/light industrial; 6 acres of office commercial; 2 acres of neighborhood convenience commercial; 40 acres of community commercial; and 3 acres of general commercial ("Project").
4. Environmental Impact Report. On October 26, 2004, the City Council, in Resolution 04-196, certified as adequate and complete the Final EIR (the "Plan EIR") for the Harter Specific Plan/Yuba City Marketplace (the "Specific Plan"). The City Council finds that no subsequent or supplemental environmental impact report relating to this Development Agreement is necessary in that the terms and conditions of the Specific Plan and this Development Agreement are consistent with and within the scope

of the Plan EIR. Mitigation measures were suggested in the Plan EIR and are incorporated to the extent feasible in the Specific Plan and in the terms and conditions of this Agreement, as reflected by the findings adopted by the City Council concurrently with this Agreement.

5. Approved Land Use Entitlements. The City has approved the following land use entitlements for the Project ("Entitlements"):

(a) Certification of the Plan EIR and adoption of the corresponding Mitigation Monitoring Program.

(b) Harter Specific Plan adopted by Resolution No. 04-197 dated October 26, 2004, ("Specific Plan");

(c) Rezoning, Ordinance No. 017-04 dated November 2, 2004;

(d) Harter Specific Plan Financing Strategy and Phasing Plan adopted by Resolution No. 04-198 dated October 26, 2004 ("Financing Plan");

(e) Harter Specific Plan Infrastructure Improvement Fee adopted by Resolution No. 04-203 dated November 2, 2004;

(f) Development Plan for Yuba City Marketplace Property (dated October 26, 2004);

(g) Ordinance No. 018-04 dated November 2, 2004 adopting this Development Agreement.

6. General Plan Consistency. Development of the Project in accordance with the Entitlements and this Agreement will provide for the orderly development of the Property and is consistent with the goals, policies, and other provisions of the City's General Plan and the Specific Plan.

7. Project Benefits. City has determined that the development of the Project as provided in the Entitlements and this Agreement is beneficial to the City, as the Agreement will reduce uncertainties in planning and provide for the orderly development of the Project, provides for the dedication and construction of public facilities and improvements, and will otherwise achieve the goals and objectives contained in the City's General Plan.

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

9. Findings. In adopting the ordinance approving this Agreement, the City Council of City specifically finds as follows:

- A. The Agreement and the Entitlements are consistent with the objectives, policies, general land uses, and programs in the City's General Plan.
- B. The Agreement and the Entitlements are compatible with the uses authorized within, and the regulations prescribed for, the land use districts in which the Project is located.
- C. The Agreement and the Entitlements are in conformity with the public convenience, general welfare and good land use practices.
- D. The Agreement and the Entitlements will not be detrimental to the health, safety, and general welfare of persons residing in the general neighborhood of the Project or the City as a whole.
- E. The Agreement and the Entitlements will not adversely affect the orderly development of Property or the preservation of property values.
- F. The Agreement is consistent with and is subject to the provisions of Government Code sections 65864 through 65869.5.

10. Property Description and Binding Covenants. The Property is that property described in Exhibit A. The City and Developer recognize and determine that the terms and conditions of this Agreement constitute covenants that shall run with the Property and the benefits and burdens hereof shall bind, and be legally enforceable by, each of them and/or all successors in interest to and assigns of the parties hereto. Accordingly, all references herein to "Developer" shall mean and refer to Harter and Brown, and each and every subsequent purchaser or transferee of the Property or any portion thereof from Developer.

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth in this Agreement, the parties agree as follows:

SECTION 1. GENERAL PROVISIONS.

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

1.2 Term. The term of this Development Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement and shall extend for a period of fifteen (15) years hereafter, unless said term is terminated, modified or extended as set forth in this Agreement or by mutual consent of the parties hereto.

If any litigation affecting development of the Property is filed challenging any Entitlements or this Agreement, including but not limited to any environmental determinations related to any of the foregoing, or challenging the validity and binding nature of this Agreement, the term of this Agreement shall be extended for the period of time such litigation is pending. Upon the conclusion of such litigation by dismissal or

entry of final judgment, Developer and the City shall indicate the period of such extension by amendment to this Agreement and by recording a notice of such effect.

1.3 Termination. This Agreement shall be terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the fifteen (15) year term;

(b) Completion of the Project in accordance with the Entitlements and the City's issuance of all required occupancy permits and acceptance of all dedications and improvements required under the Entitlements and this Agreement;

(c) Entry of final judgment or issuance of a final order directed to the City to set aside, withdraw, or abrogate City's approval of this Agreement or any material part of the Entitlements; or

(d) The effective date of a party's election to terminate the Agreement as provided in Section 4.5 of this Agreement.

1.4 Assignment.

A. Right to Assign. Developer may assign its rights to develop the Project, or any portion or phase thereof, to any successor in interest which acquires any legal or equitable interest in any portion of the Project, which rights shall run with the Property on which the Project is constructed. Each successor in interest to Developer shall be bound by all of the terms and provisions hereof applicable to that portion of the Project acquired by it. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties' successors, assigns and legal representatives.

B. Consent of City. Developer shall obtain City's prior written consent to any transfer or assignment, which consent shall not be unreasonably withheld or delayed. Failure by City to respond within forty-five (45) days to any request made by Developer for such consent shall be deemed to be City's approval of the transfer or assignment in question. The City's consent to any transfer or assignment shall be based on the ability, experience, and net worth of the proposed transferee or assignee (or any entity it controls, is controlled by, or is in common control with), as reasonably determined by the City to be necessary and adequate to fulfill Developer's obligations with respect to the Property or the portion thereof that is transferred or assigned. City may refuse to give its consent only if, in light of the proposed transferee's or assignee's reputation and financial resources, such transferee or assignee would not in City's reasonable opinion be able to perform the obligations proposed to be assumed by such transferee or assignee. Such determination shall be made by the City Manager in consultation with the City Attorney, and is appealable by Developer to the City Council.

C. Release Upon Transfer. Upon the sale, transfer or assignment in whole or in part of Developer's rights and interests under this Agreement, Developer shall be released from its obligations under this Agreement with respect to the portion of the Project so transferred; provided, however, that (i) Developer is not then in default

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under this Agreement; (ii) Developer has provided written notice of such transfer to the City and City has approved the transfer in writing; and (iii) subject to the exceptions stated herein below, the transferee executes and delivers to the City a written Assumption Agreement in which (a) the name and address of the transferee is set forth, and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Agreement with respect to the portion of the Project transferred.

If all the applicable obligations under this Agreement for any portion of the Property have been satisfied by Developer, upon written request by Developer, the City shall provide a written notice of said satisfaction of all applicable obligations under this Agreement for said portion of the Property.

1.5 Amendment. This Agreement may be amended from time to time by the mutual consent of the parties or their successor in the same manner as its adoption by ordinance as set forth in Government Code sections 65867, 65867.5, and 65868.

SECTION 2. DEVELOPMENT OF THE PROPERTY.

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

2.2 Vested Entitlements. City acknowledges that City has, by entering into this Agreement and approving the Entitlements, vested Developer's rights to develop the Project in accordance with the Entitlements. It is the intent of City and Developer that the vesting of development rights of Developer shall include the permitted land uses, density and intensity of use of the Property, timing or phasing of development, zoning, provisions for reservation or dedication of land for public purposes, and the location and size of public improvements and other terms and conditions of development of the Project as set forth in the Entitlements and this Agreement. Any amendment to this Agreement will affect only those sections amended and shall not affect any other term of this Agreement.

2.3 Rules, Regulations and Policies. Rules governing the development of the Project shall be those as contained in the Entitlements and this Agreement. In the event of any conflict between the provisions of this Agreement and any ordinance, resolution, rule, regulation or policy of the City, the provisions of this Agreement shall control.

2.4 No Conflicting Enactment. Except as provided in Section 2.5 of this Agreement, neither the City Council nor any other agency of the City shall enact an ordinance or other measure which is in conflict or reduces Developer's vested development rights as provided in this Agreement.

2.5 Application of Subsequently Enacted or Modified Rules, Regulations and Ordinances. The City may, during the term of this Agreement, apply such City-enacted

or modified rules, regulations, ordinances, laws, and official policies including improvement and construction standards and specifications and plans adopted or modified after the date of this Agreement which are not inconsistent with the development of the Project in accordance with the Entitlements and the terms of this Agreement, so long as all such enacted or modified rules, regulations and ordinances are applied City-wide.

To the extent permitted by law, should an ordinance or resolution or other measure be enacted, whether by action of the City Council, by initiative, referendum or otherwise which relates to the rate, timing or sequencing of the development or construction of the Project, including, but not limited to, development no-growth or slow growth moratoria, to the extent any such measure is inconsistent with the Entitlements and this Agreement, City agrees that such ordinance, resolution or other measure shall not apply to the Project, or any development thereof, or construction related thereto, or construction of improvements necessary therefor.

Should any initiative, referendum, or other measure be enacted, and any failure to apply such measure by City to the Project be legally challenged, Developer agrees to fully defend the City against such challenge, including providing all necessary legal services, bearing all costs therefor, and otherwise holding the City harmless from all costs and expenses of such legal challenge and litigation.

2.6 Uniform Code and Improvement Standards. Notwithstanding anything to the contrary contained in this Agreement, provided they have been adopted by the City and are in effect on a city-wide basis, City may apply to the Project, at any time during the term of this Agreement (1) the then-current Uniform Building Code and other uniform construction codes and (2) the then-current City Improvement Standards for public improvements (e.g., design and construction standards including, but not limited to, streets, water, wastewater and drainage facilities, parking lot and landscape standards, and driveway widths).

2.7 State and Federal Law. As provided in California Government Code section 65869.5, this Agreement shall not preclude the application to the Project of changes in law, regulations, plans or policies, design criteria and improvement standards to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, or regulation and City and Developer shall take such action as may be necessary to meet the minimum requirement of such state or federal law or regulation. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically mandated and required by state or federal laws and regulations.

2.8 Health and Safety Measures. Notwithstanding anything to the contrary contained in this Agreement, nothing herein shall be construed to limit City's general police power to implement, based upon appropriate and adequate findings, specific measures necessary to alleviate legitimate and bona fide harmful and noxious uses, or

protect against real, actual and dangerous threats to the health and safety of City residents, in which event any rule, regulation or policy imposed on the development of the Project shall be done to the minimum extent necessary to correct such bona fide harmful and noxious uses or protect against any such real, actual and dangerous threats to the health and safety of City residents.

2.9 City Fees, Taxes, and Assessments. City shall have the authority to enact new or increase existing fees, taxes or assessments including, but not limited to, impact fees, except that the Development Impact Fee under the Financing Plan (referred to in the Financing Plan as the Harter Specific Plan Fee) and Harter Specific Plan Developer Impact Fee Ordinance shall be set and governed exclusively by the terms of said Financing Plan and Ordinance and shall not be subject to the terms of this Section. Developer agrees to pay the City fee, tax or assessment in effect at the time of the submittal of a complete building permit application that complies with all City policies and regulations, including, but not limited to, general plan, zoning, zoning regulations, etc. provided that such fee, tax or assessment is adopted on a City-wide basis in accordance with AB 1600. Notwithstanding the foregoing, City shall have the authority to enact fees, taxes or assessments which are not City-wide, in connection with improvements to State Route 20, which shall be limited to Developer's "fair share" and shall be subject to a credit for the total cost of any improvements to State Route 20 constructed or paid for by the Developer under the Entitlements. Nothing in this Agreement constitutes a waiver of Developer's right to challenge the legality of any future fees, taxes or assessment as applied to the Project, including the nexus requirement of California law.

SECTION 3. DEVELOPER OBLIGATIONS.

3.1 Public Improvements – General. Developer shall be responsible for constructing and financing the public infrastructure improvements necessary to serve the Project and as provided in this Agreement and the Entitlements. Developer agrees to dedicate, construct or acquire the improvements or facilities and to perform the obligations set forth in this Section at its expense, subject only to those reimbursements and credits as specified in this Agreement and the Financing Plan. Developer's obligations shall be those obligations that are applicable to the portion of the Property owned by Developer pursuant to this Section, this Agreement, and the Financing Plan. Public infrastructure improvements shall be designed and constructed to the City's specifications in effect at the time such improvements are constructed.

3.2 Public Improvements. The specific infrastructure improvements shall be determined at the time of tentative subdivision review and approval of each phase of the Project. In addition to those public improvements known to be required at the time of the execution of this Agreement, and provided for and specified in this Agreement, additional public improvements necessary to address specific impacts of the Project may be designated by the City at the time of Tentative Subdivision or Development Plan Review approval provided that the infrastructure modifications (1) comply with the nexus requirements of California law and are necessary in order to address new or greater specific impacts of the Project than those addressed in the Entitlements, or (2) are necessary to address real, actual and dangerous threats to public health and safety.

3.3 Harter and Brown Obligations. Except to the extent that the Financing Plan and the Entitlements require certain obligations to be completed when certain portions of the Property are developed, (1) the obligations of Harter pursuant to this Section 3, this Agreement, and the Financing Plan shall only be those obligations that are applicable to the Harter Property; and (2) the obligations of Brown pursuant to this Section 3, this Agreement, and the Financing Plan shall only be those obligations that are applicable to the Marketplace Property.

3.4 Developer Obligations. Developer shall be obligated to construct and finance the public infrastructure improvements as provided in the Financing Plan which is attached hereto and incorporated by reference. In addition, Developer shall be obligated to do the following:

A. Prior to the issuance of the first certificate of occupancy in the Project, Developer shall annex the Property into an existing Lighting and Landscape District (or establish a new district) in order to provide for the costs of the operation and maintenance of public facilities in the Project including, but not limited to, parks, plaza areas, landscaped road medians, street lights, walls, bicycle paths, storm drains, pedestrian facilities and landscape strips along streets and sidewalks.

B. Except as provided in this Agreement, prior to the issuance of the first building permit in the Project, Developer shall dedicate the rights of way and other public properties as provided for in the Financing Plan. Other rights of way as required by the Entitlements and development of the Project shall be dedicated to the City prior to final map recordation.

C. Prior to the issuance in the Project of the sixtieth (60) building permit for single family housing or the first building permit for multi-family housing, whichever occurs first, Developer shall complete the design and construction of the five acre neighborhood park referred to in Section 6.1.1 of Appendix A of the Specific Plan, including all adjacent street frontages ("Park"). The Park will include a transition area as depicted on Figure A-11 on page 19 of the Specific Plan ("Transition Area"). Developer shall dedicate the land for the Park and the Transition Area to the City prior to the issuance of the first building permit in the Project. The design of the Park shall be approved by the City before construction of the Park by Developer. Developer shall receive a credit on its City park impact fees within the Project for Developer's costs for the design and construction of the Park but will not receive a credit for the dedication of the land. In the event the cost of the Park design and construction exceeds Developer's park impact fees, City shall reimburse Developer for the balance as funds become available in the City's Park Impact Fee Account with funds resulting from development in the Specific Plan. The costs of maintaining the Park and the Transition Area shall be paid through the Lighting and Landscape District as provided in 3.4.A.

D. As provided in the Specific Plan, Developer shall be required to provide for a Public Plaza area in Parcel 6 of the Specific Plan to be located

adjacent to the Park. Figure A-12 on page 20 of the Specific Plan depicts a conceptual illustration showing the Public Plaza in addition to other amenities. The design of the Public Plaza shall be approved by the City and shall be a minimum of 10,000 square feet. Prior to the issuance of the first building permit in the Project, Developer shall (i) dedicate to the City the land needed for the Public Plaza and (ii) pay the City \$115,000 to be used for the construction of the Public Plaza.

The Developer shall construct the Public Plaza concurrently with the development of Parcel 6 and prior to the issuance of the first certificate of occupancy in Parcel 6. Following the construction by Developer of the Public Plaza, and acceptance by City, City shall reimburse Developer the \$115,000 previously paid by Developer. Developer will be responsible for any costs which exceed \$115,000 in constructing the Public Plaza. The costs of maintaining the Public Plaza will be paid through the Lighting and Landscape District as provided in 3.4A.

E. On August 17, 2004, the City adopted Resolution No. 04-129 which enacted Development Impact Fees to be effective January 1, 2005. Notwithstanding anything to the contrary in this Agreement, and notwithstanding that Resolution No. 04-129 provides that said Development Impact Fees are not to be effective until January 1, 2005, said Development Impact Fees shall apply to the Project upon the effective date of this Agreement and Developer agrees to pay said Development Impact Fees up and until January 1, 2005, and after that date will pay the then existing Development Impact Fees in effect at the time of the submittal of a complete building permit application that complies with all City policies and regulations, including, but not limited to, general plan, zoning, zoning regulations, etc.

F. The City does not have a program or policy to require conservation easements to preserve agricultural land. Even though conservation easements are not considered a "mitigation measure," and the City has no policy for the requirement of such easements, the Developer voluntarily agrees to contract with a qualified conservation organization or public agency (not the City) ("grantee") to establish an off-site agricultural easement authorizing grantee to monitor and enforce appropriate restrictions on 130 acres of "Farmland of Statewide Importance" under the Department of Conservation's Farmland Mapping Program, to ensure that said property remains available for agricultural purposes in perpetuity. Developer shall retain title and the right to lease, transfer, or otherwise assign said property, and may continue to farm, restrict public access, and otherwise continue to enjoy all rights of ownership not inconsistent with the purpose of the easement.

SECTION 4. ENFORCEMENT AND REMEDIES.

4.1 Enforcement; Cumulative Remedies. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted

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violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages. All of the remedies described above shall be cumulative and not exclusive of one another, and the exercise of any one or more of the remedies shall not constitute a waiver or election with respect to any other available remedy.

4.2. Hold Harmless Agreement. Developer hereby agrees to indemnify, defend and hold City, its elective and appointive boards, commission, officers, agents, and employees and representatives harmless from any liability for damage or claims for damage for personal injury, or bodily injury including death, as well as from claims for property damage which may arise from Developer's operations under this Agreement, whether such operations be by Developer, or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors, except to the extent such damage or claim arises from the active negligence or willful misconduct of City. Developer agrees to and shall defend and indemnify City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity arising out of the execution, adoption or implementation of this Agreement (*exclusive of any such actions brought by Developer, its heirs, successors or assigns*). Developer, at its own cost and expense, shall procure and maintain insurance policies as required by City.

4.3 Cooperation in the Event of Legal Action Challenge. If any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Project, or Entitlements, the parties shall cooperate in defending against such challenge. Developer, at Developer's expense, shall defend such action as the real party in interest and assist City in its defense. To the extent that any such action challenges Developer's right to proceed with the Project under this Agreement, Developer shall have the control of the defense of the action or proceeding and may utilize legal counsel of its choice, subject to the approval of City, which approval shall not be unreasonably withheld, conditioned, or delayed. Developer shall reimburse city for reasonable expenses of City's attorneys resulting from representation of City in any such legal action or proceeding. In addition, Developer shall indemnify City for any liability incurred by City as a result of any such action or proceeding, including any award to opposing counsel of attorney's fees or costs.

4.4 Attorney's Fees. In any arbitration, quasi-judicial, or administrative proceedings, or any action in any court of competent jurisdiction, brought by either party to enforce any covenant or any of such party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing party shall be entitled to reasonable attorney's fees and all costs, expenses, and disbursements in connection with such action, including the costs of reasonable investigation, preparation and professional or expert consultation, which sums may be included in any judgment or decree entered in such action in favor of the prevailing party.

4.5 Defaults.

1. Failure by City or Developer to perform any term or provision of this Agreement shall constitute a default under this Agreement.

2. The party alleging the default shall give the other not less than thirty (30) days' written notice of the default. Any notice of default shall specify the nature of the alleged default and, where appropriate, the manner in which said default may be satisfactorily cured. If notice of default is given, the parties shall make reasonable efforts to agree to an action plan to cure the default within the thirty (30) days or longer time as agreed.

3. If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter.

4. Failure or delay in giving notice of default shall not constitute a waiver of any default. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default of its rights or remedies, and shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

5. No party shall be in default of this Agreement for delays in performance due to war, acts of terrorism, litigation, insurrection, strikes, flood, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, or similar basis beyond the reasonable control of the party to be excused. Any action or proceeding addressing the validity of this Agreement, any Entitlements, or any permit approval, agreement or other entitlement related to the Project, shall create an excusable delay as to Developer or to City.

4.6 Annual Review.

1. City shall, at least every twelve (12) months during the term of this Agreement, conduct a review of the good-faith compliance by Developer with the terms of this Agreement (the "Annual Review"). Said review shall be limited in scope to compliance with the terms of this Agreement pursuant to Section 65865.1 of the Government Code. The findings of the Annual Review and compliance or non-compliance with this Agreement shall be made available to Developer at the conclusion of the Annual Review.

2. City shall notify the Developer that the review will take place. Upon not less than thirty (30) days' written notice by the Community Development Director of the City, Developer shall provide such information as may be

reasonably requested and deemed to be required by the Community Development Director in order to ascertain compliance with this Agreement.

3. If the 3% administrative fee in the Financing Plan is not sufficient, City reserves the right to require Developer to pay the appropriate fee for the Annual Review as established by resolution of the City Council.

4. At the conclusion of the Annual Review, City shall make written findings and determinations on the basis of substantial evidence in the record, regarding whether Developer has complied in good faith with the terms of this Agreement. If City finds and determines that Developer has not complied with such terms, and that such non-compliance amounts to a default if not cured, then City shall deliver to Developer a notice of default and opportunity to cure, in which case the parties shall proceed as provided in Section 4.5. If notice of default is not sent within thirty (30) days after conclusion of the Annual Review, Developer shall be deemed to be in compliance with this Agreement.

5. City shall deliver to Developer, pursuant to Section 4.7 herein, a copy of all staff reports and documents to be used or relied upon in conducting the Annual Review at least ten (10) days before City's Annual Review. Developer shall be permitted to respond to City's evaluation orally at a public hearing before the City Council, by a written statement, or both.

6. If City fails to conduct the Annual Review and Developer is not in default with respect to its performance under this Agreement during the past year as evidenced by the absence of any notice of default being delivered by City to Developer, such failure shall be deemed an approval by the City of Developer's compliance with the terms of this Agreement for that Annual Review period.

4.7 Notices. All notices required or provided for under this Agreement shall be in writing and shall be sent by (i) U.S. mail, first-class postage prepaid with return receipt requested, (ii) by overnight courier or hand delivery, or (iii) by facsimile with original forwarded by U.S. mail, addressed as follows:

If to City, then to:

City Manager
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993
(530) 822-4601 (telephone)
(530) 822-4694 (facsimile)

If to Developer, then to:

Tom Tucker
Harter Packing Company
P.O. Box 1789
1321 Harter Road
Yuba City, CA 95992
(530) 673-8330 (telephone)
(530) 673-7876 (facsimile)

Gary Brown
Brown Yuba City LLC
c/o the Brown Group
8777 North Gainey Center Drive, Suite 200

Scottsdale, AZ 85258
(480) 483.2772 (telephone)
(480) 483-7171 (facsimile)

With a copy to:

Community
Development Director
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993
(530) 822-4700 (telephone)
(530) 822-4694 (facsimile)

With a copy to:

Andrea A. Matarazzo, Esq.
The Diepenbrock Law Firm
400 Capitol Mall, Suite 1800
Sacramento, CA 95814

Timothy D. Cremin, Esq.
Steefel, Levitt & Weiss
One Embarcadero Center, 30th Floor
San Francisco, CA 94111

Michael T. Pearlstein, Vice President
W.M. Grace Development Co.
7575 North 16th Street, Suite 1
Phoenix, AZ 85020

Notice shall be effective when the postal authorities indicate that the mailing was delivered, the date delivered in person, or upon receipt of the entire document by the receiving party's facsimile machine.

SECTION 5. MISCELLANEOUS PROVISIONS.

5.2 Authority to Execute Agreement. The person or persons executing this Agreement on behalf of Developer warrant and represent that they have the authority to execute this Agreement and the authority to bind Developer to the performance of its obligations hereunder.

5.2 No Agency, Joint Venture or Partnership. It is specifically understood that the Project is a private development, and the Developer shall have full power over and exclusive control of the Project, subject to the terms and conditions of this Agreement. Although City and Developer intend to cooperate and work together to carry out the Project, the parties renounce the existence of any form of agency relationship, joint venture, partnership or other association between City and Developer, and nothing contained herein or in any document executed in connection herewith shall be construed as creating any such legal relationship.

5.3 Severability. 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, void, or unenforceable, such provision shall be disregarded and this Agreement shall continue in effect unless enforcement of this Agreement without the invalidated provision would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

5.4 Construction. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

5.5 California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

5.6 Waivers. No provision or condition of this Agreement shall be considered waived unless such waiver is in writing and signed by the party to be bound.

5.7 Duty to Act Reasonably and in Good Faith. Unless otherwise expressly provided, each party shall act reasonably in giving consent, approval, or taking any other action under this Agreement. City and Developer agree that each of them shall at all times act in good faith in order to carry out the terms of this Agreement, and each of them covenants that it will not at any time voluntarily engage in any actions which frustrate the purpose and intent of the parties which is to develop the Property in conformity with the terms and conditions specified in this Agreement.

5.8 Recordation. The City shall cause this Agreement, any amendment hereto and any other termination thereof to be recorded with the County Recorder within ten (10) days of the Effective Date or the date of such amendment or termination becoming effective. Any amendment or termination of the Agreement to be recorded that affects less than all the Property shall describe the portion thereof that is the subject of such amendment or termination.

5.9 Time of Essence. Time is of the essence in the performance of each and every covenant and obligation to be performed by the parties hereunder.

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

5.11 Estoppel Certificate. Each party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (i) this Agreement is in full force and effect and a binding obligation of the parties; (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature of such default in the form attached hereto as Exhibit E. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt hereof. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Developer.

5.12 Entire Agreement. This Agreement, together with all exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. This Agreement is specifically intended by the parties to supersede

all prior agreements, whether written or oral, for the Property which may exist between the City and Developer.

In witness whereof, this Agreement has been executed by the parties hereto on the day and year first above written.

CITY:

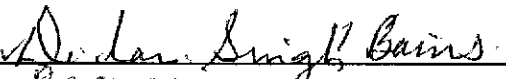
DEVELOPER:

City of Yuba City, a Municipal Corporation


Harter Packing Company, LLC, a California limited liability company

By: 
Jeffrey Foltz, City Manager

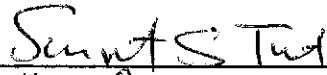
Richland Ranches, Ltd. of California
a California corporation

By: 
Its: PRESIDENT

Lomo Cold Storage, a California general partnership

By: 
Its: PARTNER

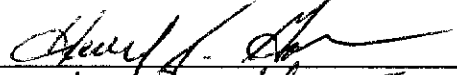
Sutter Land Properties, LLC, a California limited liability company

By: 
Its: MANAGER

Brown Yuba City, L.L.C., a California limited liability company

By: Grace Yuba City, L.L.C., an Arizona limited liability company, its Managing Member

By: Grace Investment Company, an Arizona corporation, its sole Manager

By: 
Its: VICE-PRESIDENT

ACKNOWLEDGMENTS

STATE OF CALIFORNIA
COUNTY OF SUTTER

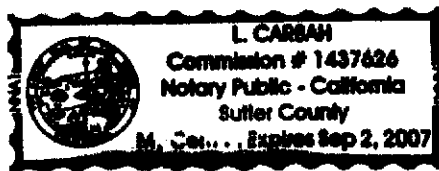
On 12/10/2004, before me, the undersigned notary public,
personally appeared Jeffrey Foltz,

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

L. Carrah



STATE OF CALIFORNIA,
COUNTY OF Sutter

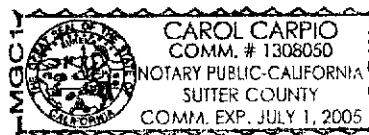
On Dec 2, 2004, before me, the undersigned notary public,
personally appeared Didar Singh Bains,

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Carol Carpio



STATE OF CALIFORNIA,
COUNTY OF Sutter

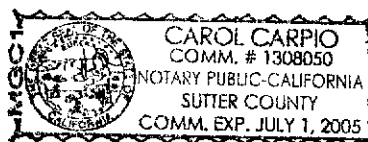
On Dec 3, 2004, before me, the undersigned notary public,
personally appeared John Michel,

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Carol Carpio



ACKNOWLEDGMENTS

STATE OF CALIFORNIA
COUNTY OF Santa Cruz

On 12-9-04, before me, the undersigned notary public,
personally appeared Surgit S Tuj

personally know to me
 proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

M Coffey



STATE OF ARIZONA
COUNTY OF MARICOPA

On November 30th, 2004, before me, the undersigned notary public,
personally appeared Howard T. Grace

personally know to me
 proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Melody U. Escobedo
Melody U. ESCOBEDO

9-14-2006

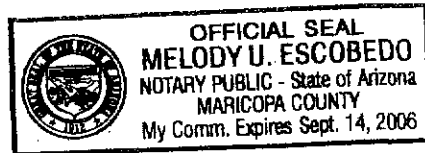


EXHIBIT A
Property Description
[Including Harter Property and Marketplace Property]

All those portions of Sections 16 and 17 of Township 15 North, Range 3 East, Mount Diablo Base & Meridian, and located in the City of Yuba City, Sutter County, California, described as follows:

BEGINNING at the Southeasterly corner of said Section 17; thence South 89°34'59" West along the southerly line of said section a distance of 959.67 feet; thence North 00°21'58" West a distance of 247.00 feet; thence South 89°34'59" West a distance of 362.00 feet to the easterly line of Bryn Mawr Subdivision No. 2; thence North 00°21'58" West along said easterly line a distance of 845.73 feet to the Northeasterly corner thereof; thence South 89°38'08" West a distance of 662.10 feet to the centerline of Ruth Avenue; thence North 00°23'17" West along said centerline a distance of 847.95 feet to the southerly line of Vine Avenue; thence North 89°26'21" East along the southerly line of said Vine Avenue a distance of 661.98 feet; thence North 00°23'47" West a distance of 390.65 feet to original Northerly line of the Sacramento Northern Railway [now UPRR]; thence North 65°14'52" West along said Northerly line a distance of 5.91 feet; thence North 00°03'54" West a distance of 1679.56 feet to the centerline of Butte House Road; thence South 70°16'57" East along said centerline of Butte House Road a distance of 2830.84 feet to the centerline of Tharp Road; thence South 00°05'30" East along said centerline of Tharp Road a distance of 2041.85 feet to the Southerly line of said Sacramento Northern Railway; thence North 65°14'52" West along said Southerly line a distance of 805.90 feet to the Northwesterly corner of Parcel 1 of Parcel Map No. 989; thence South 24°45'08" West along the westerly line of said Parcel 1 a distance of 370.00 feet; thence continuing South 65°14'52" East a distance of 11.50 feet; thence continuing South 24°45'08" West a distance of 295.66 feet; thence South 00°24'58" East a distance of 434.78 feet to said Northerly line of the original Colusa Highway; thence South 89°35'02" West along said Northerly line a distance of 25.27 feet; thence South 00°14'02" West a distance of 33.00 feet to the southerly line of said Section 16; thence South 89°35'02" West along said Section line a distance of 303.00 feet to the point of Beginning.

EXCEPTING THEREFROM Parcels "B" and "C" as described in deed to the State of California, recorded in Book 634 Official Records, at page 235, Sutter County Records.

**EXHIBIT B
Harter Property Description**

All those portions of Sections 16 and 17 of Township 15 North, Range 3 East, Mount Diablo Base & Meridian, and located in the City of Yuba City, Sutter County, California, described as follows:

COMMENCING at the Southeasterly corner of said Section 17; thence South 89°34'59" West along the southerly line of said section a distance of 959.67 feet to the POINT OF BEGINNING; thence North 00°21'58" West a distance of 247.00 feet; thence South 89°34'59" West a distance of 362.00 feet to the easterly line of Bryn Mawr Subdivision No. 2; thence North 00°21'58" West along said easterly line a distance of 845.73 feet to the Northeasterly corner thereof; thence South 89°38'08" West a distance of 662.10 feet to the centerline of Ruth Avenue; thence North 00°23'17" West along said centerline a distance of 847.95 feet to the southerly line of Vine Avenue; thence North 89°26'21" East along the southerly line of said Vine Avenue a distance of 661.98 feet; thence North 00°23'47" West a distance of 390.65 feet to original Northerly line of the Sacramento Northern Railway [now UPRR]; thence North 65°14'52" West along said Northerly line a distance of 5.91 feet; thence North 00°03'54" West a distance of 1679.56 feet to the centerline of Butte House Road; thence South 70°16'57" East along said centerline of Butte House Road a distance of 2830.84 feet to the centerline of Tharp Road; thence South 00°05'30" East along said centerline of Tharp Road a distance of 2041.85 feet to the Southerly line of said Sacramento Northern Railway; thence North 65°14'52" West along said Southerly line a distance of 2184.10 feet to the centerline of Harter Road; thence South 00°25'01" East along the westerly line of said Parcel 1 a distance of 370.00 feet; thence continuing South 65°14'52" East a distance of 11.50 feet; thence continuing South 24°45'08" West a distance of 1661.26 feet to the southerly line of said Section 17; thence South 89°34'59" West along said Section line a distance of 313.67 feet to the point of Beginning.

EXCEPTING THEREFROM Parcels "B" and "C" as described in deed to the State of California, recorded in Book 634 Official Records, at page 235, Sutter County Records.

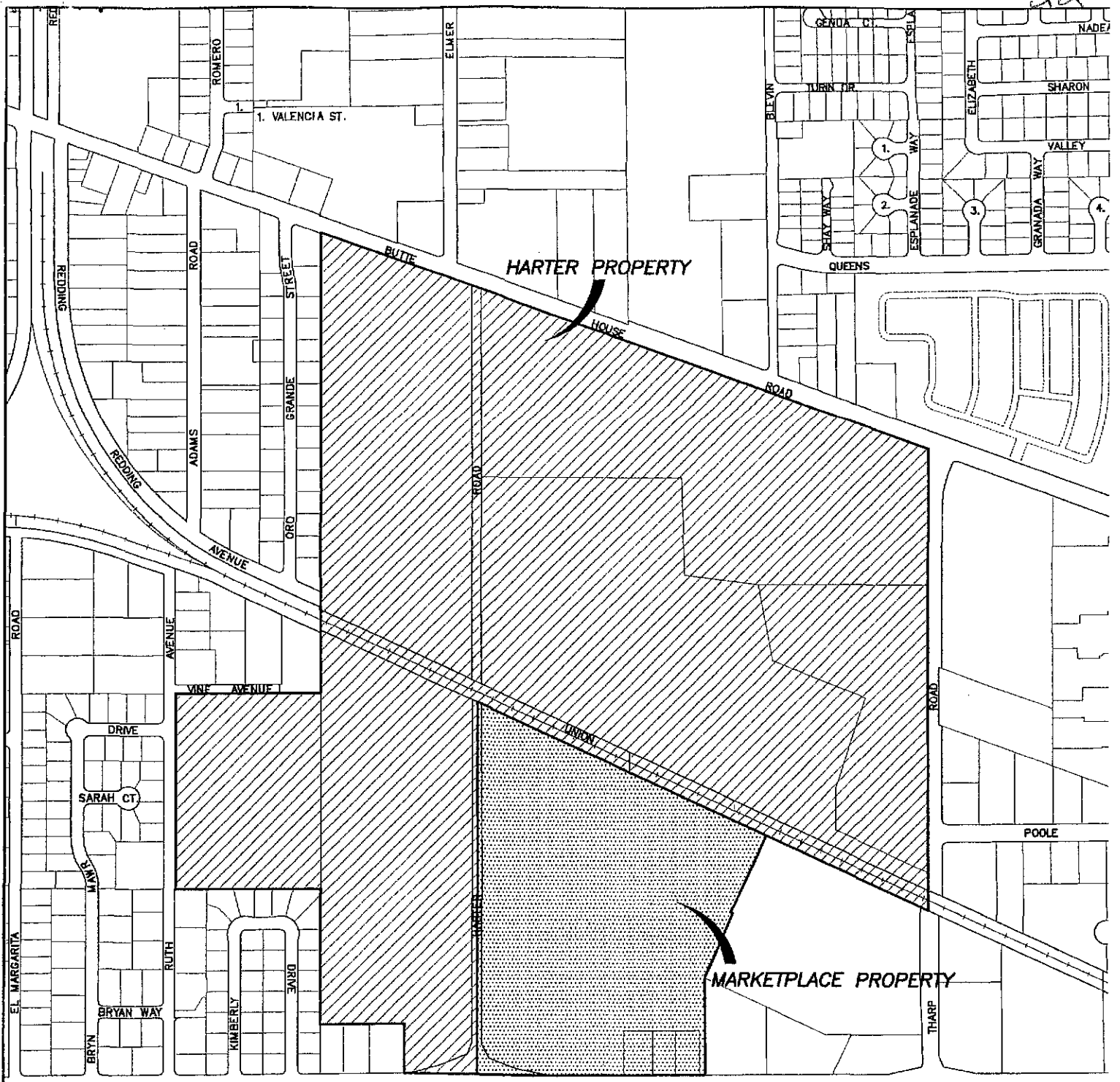
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EXHIBIT C
Marketplace Property Description

All those portions of Sections 16 and 17 of Township 15 North, Range 3 East, Mount Diablo Base & Meridian, and located in the City of Yuba City, Sutter County, California, described as follows:

BEGINNING at the Southeasterly corner of said Section 17; thence South 89°34'59" West along the southerly line of said section a distance of 646.00 feet to the centerline of Harter Road; thence North 00°25'01" West a distance of 1661.26 feet to the Southerly line of the Sacramento Northern Railway [now UPRR]; thence South 65°14'52" East along said Southerly line a distance of 1378.20 feet to the Northwesterly corner of Parcel 1 of Parcel Map No. 989; thence South 24°45'08" West along the westerly line of said Parcel 1 a distance of 370.00 feet; thence continuing South 65°14'52" East a distance of 11.50 feet; thence continuing South 24°45'08" West a distance of 295.66 feet; thence South 00°24'58" East a distance of 434.78 feet to the Northerly line of the original Colusa Highway; thence South 89°35'02" West along said Northerly line a distance of 25.27 feet; thence South 00°14'02" West a distance of 33.00 feet to the southerly line of said Section 16; thence South 89°35'02" West along said Section line a distance of 303.00 feet to the point of Beginning.

EXCEPTING THEREFROM Parcels "B" and "C" as described in deed to the State of California, recorded in Book 634 Official Records, at page 235, Sutter County Records.



STATE HIGHWAY 20

EXHIBIT D



SCALE- 1"=600'

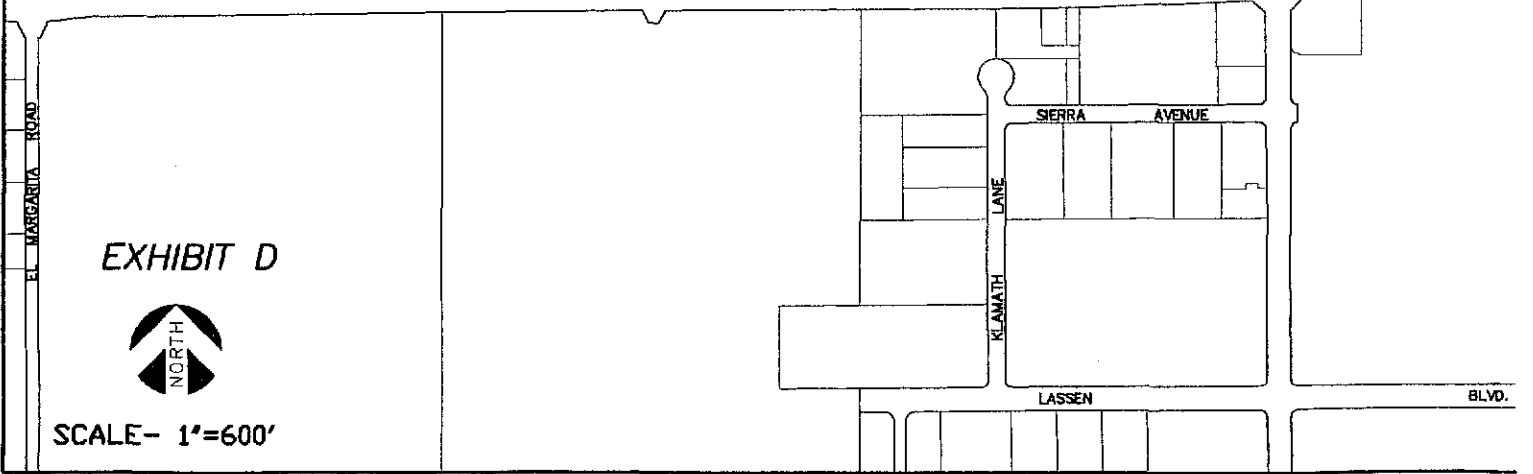


EXHIBIT E

Estoppel Certificate

_____ (Third Party Address)

Re: Harter Specific Plan Development Agreement
Dated: _____
Between the City of Yuba City ("City") and "Developer"

Dear _____:

Reference is made to the above-described Development Agreement between the City and Developer. The City understands that you are entering into a transaction with Developer that relates to, among other things, this Agreement. The City represents that:

1. A true and correct copy of the Agreement is attached as Exhibit A.
2. There are no modifications, amendments, supplements, arrangements, side letters, or understandings, oral or written, of any sort, modifying, amending, altering, supplementing, or changing the terms of the Agreement except as follows: _____
3. The Agreement is in full force, and the Agreement has been duly executed and delivered by, and is a binding obligations of, the City.
4. The City acknowledges that Developer is in full compliance with all terms of the Development Agreement, as well as all other City ordinances, regulations, and policies regulating the use and development of the Developer's property subject to this Development Agreement.
5. The undersigned is authorized to execute this letter on the City's behalf.

Very truly yours,

City of Yuba City

By: _____
Its: Community Development Director