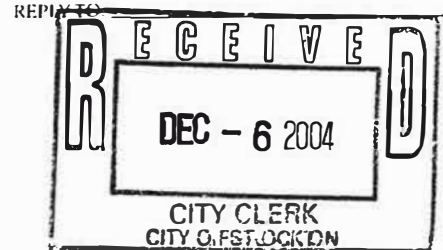




CITY OF STOCKTON

OFFICE OF THE CITY ATTORNEY

City Hall • 425 N. El Dorado Street • Stockton, CA 95202-1997 • 209/937-8333 • Fax 209/937-8898
www.stocktongov.com



DATE: December 2, 2004

TO: KATHERINE GONG MEISSNER, City Clerk

FROM: GUY D. PETZOLD, Deputy City Attorney

RE: **CANNERY PARK DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF STOCKTON AND HUMAN INVESTORS, LLC**

Attached is a fully executed Development Agreement dated October 14, 2004. Said Development Agreement was recorded as Document No. 2004-246441 on October 29, 2004. The Development Agreement was authorized by City of Stockton Ordinance No. 020-04, which was adopted September 14, 2004 and effective October 14, 2004.

Said Development Agreement may be retained for your files.

OFFICE OF THE CITY ATTORNEY

By 
GUY D. PETZOLD
DEPUTY CITY ATTORNEY

GDP:plc

Attachment

cc: Administrative Services
James E. Glaser, Community Development Director
Michael D. Hakeem, Esq.
Hakeem Ellis & Marengo
3414 Brookside road, Suite 100
Stockton, CA 95219-1751
Holman Investors, LLC
Attn: Matt Arnaiz
P. O. Box 8596
Stockton, CA 95208

::ODMA\GRPWISE\COS.CA.CA_LIBRARY:30498.1



C-04-379 (P)

DOC # 2004-246441

10/29/2004 12:48P Fee:NC

Page 1 of 29

Recorded in Official Records

County of San Joaquin

GARY W. FREEMAN

Assessor-Recorder-County Clerk

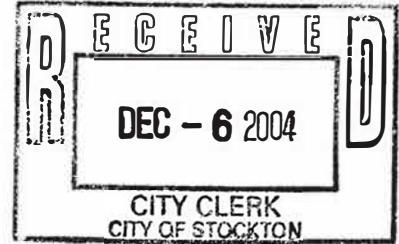
Paid by CITY OF STOCKTON

**Recording Requested By:
MICHAEL D. HAKEEM, ESQ.**



When Recorded Return To:

Office of the City Attorney
City of Stockton
400 N. El Dorado Street, 2nd Floor
Stockton, CA 95202-1997



**CANNERY PARK
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF STOCKTON
AND HOLMAN INVESTORS, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY**

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF STOCKTON
AND HOLMAN INVESTORS, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY**

This Development Agreement (herein the "Agreement") is entered into this 14TH day of Oct., 2004, by and between the City of Stockton, a Municipal Corporation (herein the "City"), and Holman Investors, LLC, a California Limited Liability Company, (herein the "Developer") (City and Developer are collectively referred to as the "Parties"), pursuant to the authority of Section 65864 et seq., of the Government Code of the State of California.

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 et seq. (herein the "Development Agreement Statute"), which authorize any city, county, or city and county to enter into a development agreement with an applicant for a development project establishing certain development rights in the property which is the subject of the development project application.

B. In accordance with Government Code Sections 65864 et seq., the City has adopted Stockton Municipal Code Chapter 16, incorporated herein by this reference, establishing rules, regulations, procedures and requirements, including fees, for consideration of development agreements (herein the "Enabling Ordinance").

C. The Developer is the owner of approximately 450 +/- acres of land located at the southwest corner of State Route 99 and Eight Mile Road, in the County of San Joaquin (the "Subject Property"), as described in Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated herein by reference. The Developer intends to annex the Subject Property into the City of Stockton for commercial and residential land uses (the "Project") in accordance with this Agreement.

D. The purpose of this Agreement is to facilitate the implementation of the General Plan through the development of the Project, thereby realizing the public benefits to City and private benefits to Developer described in these Recitals. The development of the Project requires a major investment by the Developer in public facilities, substantial front-end investment in on-site and off-site improvements, dedications of land, participation in other programs for public benefit and purposes, and substantial commitments of the resources to achieve both private benefits of the Project for the Developer and the public purposes and benefits of the Project for the City. The Developer will be unable to make and realize the benefits from such commitments of land and resources without the assurances of a realized Project provided by this Agreement. City has determined that the granting of such assurances is

necessary to enable the Developer to undertake the development of the Project and thereby achieve the public purposes and benefits of the Project.

E. The general benefits to be received by the City from the implementation of the Project include, without limitation:

(1) Implementation of the General Plan and furthering its goals to create additional commercial development for job creation and additional sales tax revenue and, in addition, to provide for a diversity of housing types and densities.

(2) Creation of an urban environment as envisioned in the General Plan for City of Stockton residents.

(3) Providing the Developer with sufficient certainty and predictability in the development process to induce the Developer to incur substantial commitments to public infrastructure and amenities.

(4) Insuring that the Developer provides the herein referenced public improvements, facilities, fees and services.

F. The general benefits to be received by the Developer from the implementation of the Project include, without limitation, obtaining sufficient certainty and predictability in the development process to justify the required substantial up-front capital investment for a Project which will require multiple years to build out.

G. The City has determined that the Project implements the goals and policies of the General Plan applicable to the Project and imposes appropriate standards and requirements with respect to the development of the Property as to maintain the overall quality of life and of the environment within the City. As part of the process of approving the Project, the City has, in accordance with CEQA, undertaken the required analyses of the environmental effects which would be caused by the Project. An Environmental Impact Report will be certified in connection with the Project. The City has imposed, and the Developer has accepted, a series of mitigation measures in connection with the development of the Project to eliminate the anticipated adverse impacts on the City's traffic conditions and on the levels of public services and facilities within the City.

H. In exchange for providing these benefits to the City, the Developer desires to receive the assurance that it may proceed with the development of the Project.

I. The parties agree that this Agreement will promote and encourage the development of the Project by providing the Developer and any future owners and lenders with a greater degree of certainty of the Developer's ability to expeditiously and economically complete the development effort, and that the consideration to be received by the City pursuant to this Agreement and the rights secured to the Developer hereunder constitute sufficient consideration to support the covenants and agreements of the City and the Developer.

J. The City, by electing to enter into this contractual agreement, acknowledges that the obligations of the City shall survive beyond the term or terms of the present City Council and that such action will serve to bind the City and future councils to the obligations thereby undertaken. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by both the City and its Council and have been found to be fair, just and reasonable, and the City has concluded that the pursuit of the Project will serve the best interests of its citizens, and the public health, safety and welfare will be best served by entering into this obligation.

K. This Agreement is intended to be, and should be construed as, a Development Agreement within the meaning of the Development Agreement Statute and the Enabling Ordinance. The City and the Developer have taken all actions mandated by and have fulfilled all requirements set forth in the Development Agreement Statute and the Enabling Resolution.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which is hereby acknowledged, the City and the Developer hereby agree as follows:

Article 1. Project and Property Subject to and Term of this Agreement.

Section 1.1 Incorporation of Recitals

The parties agree the foregoing Recitals are true and correct.

Section 1.2 Project and Property Subject to this Agreement.

All of the Project and the Subject Property shall be subject to this Development Agreement. Except as modified herein, the permitted uses, the density and intensity of use, the location of uses, the maximum height and size of proposed buildings, and other standards of project design applicable to the Project shall be as set forth in the Stockton Municipal Code, as amended from time to time.

Section 1.3 Term.

a. Term. The term of this Agreement shall commence upon the Effective Date and shall extend for a period of twenty (20) years thereafter unless terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties thereto, subject to the amendment provisions of this Agreement (the "Term"). The Term has been established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Subject Property, and obtain the public benefits of the Project. City finds that a term of such

duration is reasonably necessary to assure City of the realization of the public benefits from the Project. In establishing and agreeing to such term, City has determined that this Agreement incorporates sufficient provisions to permit City to monitor adequately and respond to changing circumstances and conditions in granting permits and approvals and undertaking actions to carry out the Project.

b. Extension of Term Upon Legal Challenge. If any litigation affecting the Subject Property is filed challenging any of the approvals granted pursuant to this Agreement (including but not limited to any environmental determinations relating to any of the foregoing), or otherwise raising issues of validity and binding nature of this Agreement, the Term of this Agreement shall be extended for the period of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or final entry of judgment, and the Developer and City shall execute an amendment to this Agreement setting forth the period of any such extension and may record a notice to such effect. The extension of time shall not be applicable if the Developer is the plaintiff or petitioner in the litigation unless a court of competent jurisdiction orders an extension.

c. Term of Subdivision Maps. The term of any Parcel Map or Tentative Map approved for the Project or of any amendment to any such map shall automatically be extended (pursuant to Government Code Section 66452.6(a)) for the life of this Agreement.

Section 1.4 Definitions.

As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- a. "Agreement" means this Development Agreement by and between the City and the Developer.
- b. "Applicable Law" means the terms and conditions of this Agreement; the rules, regulations, and official policies of the City (including the plans, municipal codes, ordinances, resolutions, and other local laws, regulations, and policies of City) in force and effect at the time of application for the specific relevant project approvals or as provided in this Agreement.
- c. "Builder" means those successors in interest who acquire land from the Developer in reliance upon the rights and obligations under this Agreement and for the purpose of constructing certain "in-tract" site improvements.
- d. "CEQA" means the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.).
- e. "City" means The City of Stockton, California, which is a Charter City.
- f. "City Council" means the City Council of the City of Stockton, California.

g. “Developer” means the Holman Investors, LLC, and the permitted successors and assigns.

h. “Effective Date” means the thirty-first (31st) day following the date the ordinance approving this Agreement is adopted or upon annexation of the entire Subject Property into the City of Stockton as shown by the recordation of the Certificate of Completion by the LAFCO executive officer pursuant to Government Code section 57202, whichever occurs last.

h. “Mortgage” means a mortgage, deed of trust, sale and leaseback arrangement or other transaction in which the Subject Property, or a portion thereof or interest therein, is pledged as security, contracted for in good faith and for fair value.

i. “Mortgagee” means the holder of the beneficial interest under a Mortgage, or the owner of the Subject Property, or interest therein, under a Mortgage.

j. “Project” means the development of the Subject Property, as well as the construction of other improvements and infrastructure located within or outside of the Subject Property in accordance with this Agreement.

k. “Project Approvals” means any existing or necessary land use, zoning, site plan or subdivision approvals and all other approvals and entitlements required for the development of the Project, including, but not limited to, General Plan amendments, zone changes, zone variances, conditional use permits, grading permits, building permits, lot line adjustments, encroachment permits, business licenses, site plan approvals, parcel maps, tentative subdivision maps and subdivision improvement agreements and any accompanying conditions of approval that will accomplish the goals, objectives, policies and plans referenced, described, implied and shown in this Agreement.

l. “Reserved Discretionary Approvals” means any discretionary land use entitlements which Developer may seek from City after the date of this Agreement, and for which City is authorized by law (including, but not limited to, the state Planning and Zoning Law {Government Code Section 65000-66037} and the Stockton Municipal Code) to exercise discretion. Reserved Discretionary Approvals may include, inter alia, General Plan Amendments, zone reclassifications, Specific Plan amendments and use permits. Reserved Discretionary Approvals does not include Final Maps for all or any portion of the Project.

m. “Subject Property” means that certain real property consisting of approximately 450 +/- acres as legally described on Exhibit “A” and depicted on Exhibit “B”.

//
//
//
//

Article 2. Covenants Run With The Land.

Section 2.1 Covenants Run With The Land.

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entity acquiring the Subject Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Subject Property hereunder, or with respect to any City owned property or property interest: (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

Article 3. Rights and Obligations of the Parties.

Section 3.1 Rights Generally.

a. During the term of this Agreement, Developer shall have a right to develop the Project and use the Subject Property in a manner consistent with the provisions of this Agreement and Applicable Law.

b. During the term of this Agreement, City shall have a right to regulate the development and use of the Subject Property in a manner consistent with the provisions of this Agreement and Applicable Law.

Section 3.2 Obligations of Developer.

a. Developer shall faithfully and timely provide the on- and off-site improvements as required by this Agreement, Existing Approvals and Reserved Discretionary Approvals, including the payment of any fees, implementation of any mitigation measures, and completion of any conditions placed on a tentative subdivision map.

b. Developer shall maintain the insurance required under Article 7.

c. Notwithstanding any provision of this Agreement or the applicable laws of the City of Stockton, Developer shall limit development of the site to a total of not more than one thousand one hundred and sixteen (1,116) units of single family detached housing and two hundred and ten (210) units of multi-family housing and one million four hundred fifty two thousand five hundred and eight (1,452,508) square feet of light industrial business park land use and one million seventy eight thousand seven hundred and sixty three (1,078,763) square feet of commercial land use. (See attached Exhibit "B" Land Use Summary). However, Developer shall be entitled to allocate the single family detached housing units and the multi-family housing units on any parcel subject only to the extent that same does not exceed the maximum density for the zoning designation and the maximum units provided for herein.

Section 3.3 Obligations of City.

a. Provided that Developer is not in default under this Agreement, City agrees that it will accept, in good faith, for processing, review and action, all applications for zoning, conditional use permits, development permits, subdivision maps or other entitlements for use of the Subject Property in accordance with the terms and conditions of this Agreement. The City shall inform the Developer, upon request, of the necessary submission requirements for a complete application for each entitlement for use of the Subject Property, and shall review said application and schedule the application for review by the appropriate authority.

b. The City shall exercise reasonable diligence to expedite the processing of the Reserved Discretionary Approvals for the development of the Project. If City is unable to timely process any of Developer's permit applications, upon request by Developer, City will engage outside consultants to aid in such processing, provided that Developer shall be required to advance all charges to be incurred by City for such outside consultants. In this regard, the Developer, in a timely manner, will provide the City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and will cause the Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore.

Article 4. Application of Other Laws

Section 4.1 No Conflicting City Laws. City may apply to the Project and to the Subject Property any rule, regulation, or official policy of City (including any plan, municipal code, ordinance, resolution, or other local law, regulation, or policy of City) that does not conflict with this Agreement. City shall not, however, apply to the Project or the Subject Property (whether by initiative, referendum, imposition of mitigation measures under CEQA, or otherwise) any law or regulation that is in conflict with this Agreement. If City attempts to apply a law or regulation to the Project or to the Subject Property, which Developer believes to conflict with this Agreement, Developer shall provide to City in writing a notice describing a legal and factual basis for Developer's position. The parties shall meet and confer within thirty (30) days after the date of such written notice with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution can be reached, either party may take action as may be permitted under Article 5 below.

Section 4.2 Uniform Codes and Standard Specifications. Except as otherwise provided for in this Agreement, nothing herein shall prevent City from applying to the Project standards contained in uniform building, construction, fire, or other uniform codes as the same may be adopted from time to time by City. Moreover, nothing herein shall prevent City from applying to the Project standards (specifications for public improvements, e.g., streets, storm drainage, parking lot standards, driveway widths) for those improvements off-site as the same may be adopted or amended from time to time by City, provided that the provisions of any such standards and specifications shall apply only to the extent that they are in effect on a city-wide basis.

Section 4.3 Other Conditions and Approvals. Nothing herein shall prevent the City from approving and enforcing additional new conditions on Project Approvals including, but not limited to, new tentative maps not inconsistent with the terms of this Agreement.

Section 4.4 Fees. Nothing herein shall prevent the City from imposing upon the Project and the Subject Property any new or increased public facilities fees, processing fees, building permit fees, plan check fees, inspection fees, or any other fees, taxes, or charges which are in force and effect on a City-wide basis at the time application is submitted for those permits; provided, however, the City shall not impose on the Project or the Subject Property any new fee identified or imposed as a county-wide traffic impact mitigation fee, or any fee or exaction not in compliance with Government Code sections 66000 *et seq.*

Section 4.5 State and Federal Law. Nothing herein shall prevent City from applying to the Project any change in law or regulation to the extent that the application of such change is required by (1) state or federal laws or regulations; or (2) any regional governmental agency that, due to the operation of state law (and not the act of City through a memorandum of understanding, joint exercise of powers authority, or otherwise that is undertaken or entered into following the Effective Date), has binding legal authority on City. If the application of such changes prevents or precludes performance of one or more provisions of this Agreement, City and Developer shall take any and all such actions as may be necessary or appropriate to ensure that the provisions of this Agreement shall be implemented to the maximum extent practicable.

Section 4.6 Water Supply. In accordance with the requirements of Cal. Gov't Code § 65867.5, City and Developer agree that the tentative subdivision map for the Project is hereby made subject to a condition that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be secured in accordance with the provisions of Cal. Gov't Code § 66473.7(b).

Article 5. Default, Remedies, Termination.

Section 5.1. General Provisions.

a. Developer shall be in default under this Agreement upon the happening of one or more of the following events or conditions:

(1) If a material warranty, representation, or statement made or furnished by Developer to the City is false or proves to have been false in any material respect when it was made;

(2) A finding and determination by the City Council made following a periodic review, that upon the basis of substantial evidence, Developer has not complied in good faith with a material requirement of this Agreement;

(3) An express repudiation, refusal, or renunciation of this Agreement, if the same is made in writing and signed by the Developer; or

b. The City shall be in default under this Agreement upon the happening of one or more of the following events or conditions:

(1) The City fails to comply in good faith with a material requirement of this Agreement regarding the permitted development standards and density of uses specified herein; or

(2) An express repudiation, refusal, or renunciation of this Agreement, if the same is made in writing and signed by the City.

c. In the event of a default and subject to extensions of time by mutual consent in writing:

(1) If a defaulting party does not cure such default within ninety (90) days following written notice of default from the other party, where such failure is of a nature which can be cured within such ninety (90) day period; or

(2) If such failure is not of a nature which can be cured within such ninety (90) day period, and the defaulting party does not within such ninety (90) day period commence reasonable efforts to cure such default, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such default, after notice and expiration of the ninety (90) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party to this Agreement may at its option institute legal proceedings pursuant to this Agreement or give notice of intent to terminate this Agreement in the manner provided herein.

d. During any ninety (90) day period specified in subsection (c) above, the party charged shall not be considered in default for the purposes of termination or institution of legal proceedings. Any notice of default given hereunder shall specify in detail the nature of the failures in performance which the noticing party claims constitutes the default and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement.

Section 5.2 Developer Default: City Remedies.

In the event Developer is in default under the terms of this Agreement, City shall have the right to exercise any of the following remedies:

- a. To waive in its sole and absolute discretion such default as not material;
- b. To refuse processing of an application for, or the granting of any permit, approval, or other land use entitlement for, development or construction of the Subject Property or portion thereof owned or controlled by Developer, including, but not limited to, the withholding of grading, excavation, building, and occupancy permits;
- c. To pursue available legal remedies provided for in Section 4.6 hereof;
- d. To terminate this Agreement as provided in Section 4.8;
- e. To delay or suspend City performance under the Agreement;
- f. To cure and charge back costs to the Developer in emergency situations imposing, in the good faith determination of City, an immediate danger to the health or safety of persons or danger to property, with such prior notice to the Developer as is appropriate under the circumstances; and
- g. Forfeiture of security under any secured agreement (i.e. subdivision improvement agreement).

Nothing in this section herein shall be deemed to supersede or preclude City's rights and remedies under the terms of any permit, approval, or land use entitlement granted for the development and use of the Subject Property.

Section 5.3 Default by the City: Developer Remedies.

In the event City is in default under the terms of this Agreement, Developer shall have the right to exercise any of the following remedies:

- a. To waive in its sole and absolute discretion such default as not material;
- b. To pursue legal remedies provided for in Section 4.6 hereof;
- c. To terminate this Agreement as provided in Section 4.8 hereof; and
- d. To delay or suspend Developer performance under the Agreement which is delayed or precluded by the default of the City.

Section 5.4 Annual Review.

The Enabling Ordinance provides for annual review of Developer's good faith compliance with the terms of this Agreement. City shall initiate each such periodic review by written notice to Developer. Upon receipt of such written notice, Developer shall comply with such requirements of the Enabling Ordinance and shall furnish City in connection with each annual review a comprehensive report demonstrating good faith compliance by Developer with the terms of this Agreement. Following any such periodic review, if the Developer is determined to be in good faith compliance with the terms of this Agreement, the City will furnish the Developer upon Developer's request a certification of compliance in recordable form.

Failure of the City to conduct a periodic review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement, nor shall the Developer have or assert any defense to such enforcement by reason of such failure to conduct a periodic review.

Section 5.5 Enforced Delay, Extension of Times of Performance.

In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, its departments, agencies, boards and commissions, enactment of conflicting State or Federal laws or regulations, new or supplementary environmental regulation, litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement, whether instituted by the Developer, the City, of any other person or entity) or similar bases for excused performance. If written notice of such delay is given to the other party after the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 5.6 Legal Actions.

In addition to any other rights or remedies, a party may institute legal action to cure, correct, or remedy any default by any other party to this Agreement, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation hereunder. In no event shall the City, or its officers, agents, or employees, be liable for monetary or other damages for any breach or violation of this Agreement, it being expressly understood and agreed that the sole legal remedy available to developer 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 5.7 Applicable Law and Attorneys' Fees.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. The Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of

review of the validity and meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. For purposes of this Agreement, reasonable attorneys' fees of the City Attorney's Office shall be based on comparable fees of private attorneys practicing in the County of San Joaquin.

Section 5.8 Events and Manner of Termination.

Because of the substantial reliance of both Developer and City on the provisions of this Agreement in implementing the development of the Project, both Developer and City desire to avoid termination of this Agreement when other appropriate remedies or procedures to resolve disputes or problems exist. Prior to termination, City and Developer will meet and confer with the objective of attempting to arrive at a mutually acceptable alternative to termination, which substantially advances the objectives of both in entering into this Agreement. Accordingly this Agreement may be terminated by a party only under any one or more of the following circumstances and in each case subject to the condition that the City has been materially deprived of a bargained for public benefit of this Agreement:

- a. By expiration of its term, as provided in Section 1.3 hereof;
- b. By operation of Section 5.9 hereof;
- c. By operation of Section 5.10 hereof; or
- d. By a material default hereunder by a party for which the non-defaulting party in the good faith exercise of its judgment determines that other remedies hereunder are inadequate or not available to correct such default or provide substantial relief to the non-defaulting party provided, however, that the non-defaulting party desiring to terminate this Agreement shall first give written notice to the defaulting party of its intent to terminate this Agreement, the matter shall be scheduled for consideration and review by the City Council within sixty (60) days after such notice of intent to terminate is delivered to the defaulting party, and if the default is not then resolved to the mutual satisfaction of the Parties, termination shall be effective upon thirty (30) days following such consideration and determination by the City Council. Said single ninety (90) day period shall be a final resolution regarding the particular material default for which written notice was given.

Section 5.9 Severability.

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect. However, if such invalidity or unenforceability would have a material adverse impact on the Project, the Developer may terminate this Agreement by providing written notice thereof to the City.

Section 5.10 Termination Upon Completion of Development.

Except as otherwise provided herein, this Agreement shall terminate when the Subject Property has been fully developed and all of the Developer's obligations in connection with the Project are satisfied as mutually determined by the City and the Developer. For purposes hereof, all obligations of Developer hereunder shall be deemed discharged and fulfilled with respect to lots or parcels shown on duly filed final subdivision maps upon final inspection and occupancy, subject to compliance with (i) the conditions imposed in connection with such filing, and (ii) the conditions imposed in connection with issuance of the building permits.

Section 5.11 Effect of Termination on Developer Obligations.

Termination of this Agreement as to the Developer or the Subject Property or any portion thereof shall not affect any requirements to comply with the terms and conditions of the applicable zoning, any development plan approvals, approval and acceptance of infrastructure improvements, any applicable permit(s), or any subdivision map or other land use entitlements approved with respect to the Subject Property, nor shall it affect any other covenants of the Developer specified in this Agreement to continue after the termination of this Agreement.

Section 5.12 Estoppel Certificate.

Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. The City acknowledges that a certificate hereunder may be relied upon by Permitted Assignees and other persons having an interest in the Subject Property, including holders of mortgages and deeds of trust.

Section 5.13 Extension of Tentative Map

Upon timely application by Developer for an extension of the approved or conditionally approved Tentative Map for the Project, City shall formally approve or deny the application for extension within the sixty-day period permitted by law. City and Developer mutually consent to extend the deadline provided in Government Code Section 66451.1(a) until such time as a formal decision is made on the application for extension.

Article 6. Assignments and Transfer of Ownership.

Section 6.1 Right to Assign.

Developer shall have the right to assign (by sale, transfer, or otherwise) its rights, duties

and obligations under this Agreement as to any portion of the Subject Property subject to the provisions contained in this Article 6; provided, however, this Agreement and any portion thereof shall not be assigned, nor shall any of the Developer's duties be delegated, without the written consent of the City, which consent shall not be unreasonably withheld. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force and effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

Section 6.2 Consent to Assignment: Release Upon Assignment.

Upon assignment, in whole or in part, of Developer's rights and interests under this Agreement, Developer/Assignor shall be released from its obligations with respect to the Subject Property, lot, parcel, or portion thereof so assigned, to the extent arising subsequent to the effective date of such assignment, if: (i) Developer (or Assignor) was not in default under this Agreement at the time of the assignment, and (ii) Developer has provided to City written request for consent to assignment, and (iii) the Assignee is a qualified applicant as determined by City in its sole discretion, and (iv) the Developer and the party to whom the rights are assigned ("Assignee") have signed an Assignment and Assumption Agreement in a form and content acceptable to the City Attorney and (v) the City Council has consented in its sole and absolute discretion, to such assignment, and (vi) with respect to assignment of any lot or parcel that is not shown on a duly filed final subdivision map, the Assignee has signed all required agreements, and posted required bonds and insurance, to complete all required subdivision improvements. .

Article 7. Mortgagee Protection: Certain Rights of Cure.

Section 7.1 Encumbrances on the Subject Property.

The parties hereto agree that this Agreement shall not prevent or limit the Developer, in any manner, at the Developer's sole and absolute discretion, from encumbering the Subject Property (other than property to be offered for dedication) or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. The City acknowledges that Mortgagee may require certain modifications to this Agreement, and the City agrees, upon request, from time to time, to meet with Developer and/or representatives of any such Mortgagee to negotiate in good faith any such request for modification. The City further agrees that it will not unreasonably withhold its consent to any such requested modification to this Agreement provided such modifications are processed in accordance with the procedures for amendment of this Agreement. Any Mortgagee and its successors and assigns shall be entitled to the rights and privileges set forth in this section.

Section 7.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid,

diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Subject Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise) shall be subject to all of the terms and conditions of this Agreement.

Section 7.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of the Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance, except that, to the extent that any covenant to be performed by the Developer is a condition to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder.

Section 7.4 Notice of Default to Mortgagee: Right of Mortgagee to Cure. .

Each Mortgagee shall be entitled to receive written notice from the City of results of periodic review and any default by Developer under this Agreement, provided such Mortgagee has informed the City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default within one hundred twenty (120) days after receipt of such notice, or, if such default can only be remedied or cured by such Mortgagee upon obtaining possession of the Subject Property, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure such default within one hundred twenty (120) days after obtaining possession, and the City may not exercise any of its remedies under this Agreement until expiration of such one hundred twenty (120) day period; provided, that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such one hundred twenty (120) day period, the Mortgagee shall have such additional time as is reasonably necessary to remedy or cure such default. Any Mortgagee who comes into possession of the Subject Property or any portion thereof or any improvement thereon, pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise shall take the Subject Property or such portion thereof or improvements thereon free and clear of any claims for payment or charges against the Subject Property or improvements pursuant to this Agreement which accrue prior to the time such Mortgagee comes into possession of the Subject Property.

Article 8. Hold Harmless and Indemnification: Insurance.

Section 8.1 Hold Harmless and Indemnification.

a. The Developer hereby agrees to and shall hold the City, its elective and appointive boards, commissions, officers, agents, and employees harmless from any liability for the Developer's negligence or willful misconduct or other action or inaction (including but not limited to strict liability) resulting in damage or claims for damage for personal injury, including

death, as well as from claims for property damage, which may arise from the Developer's or the Developer's contractors', sub-contractors', agents', or employees' operations under this Agreement, other than liability or claim based on City's gross negligence or willful misconduct, whether such operations be by the Developer, or by any of the Developer's contractors, sub-contractors, or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's contractors or subcontractors; provided, however, that the foregoing indemnity provision shall be void to the extent it violates applicable laws or would constitute a joint venture, partnership, or other participation in the business affairs of Developer by City.

b. In the event of any legal action instituted by a third party or any governmental entity or official arising out of the approval, execution, or implementation of this Agreement (exclusive of any such actions brought by the Developer), the Developer agrees to and shall cooperate fully and join in the defense of the City of such action. The City at its sole option may elect to tender the defense of any legal action to the Developer, and in such event, Developer shall hold the City harmless from, indemnify and defend the City from all costs and expenses incurred in the defense of such matter.

Section 8.2 Insurance.

a. Commercial General Liability Insurance. Developer shall, at all times during the term of this Agreement when development and/or construction is actually occurring on the Subject Property, maintain or cause to be maintained commercial general liability and property damage insurance covering the risks of bodily injury and/or death, property damage, and personal injury liability, with total limits of not less than One Million Dollars (\$1,000,000.00). The Parties shall mutually review the insurance limits hereunder on each anniversary of the term of this Agreement, and upon the granting of an extension of the term of this Agreement with the objective that such insurance limits shall be adjusted at such times to conform to then prevailing City standards. Each policy of insurance hereunder shall name the City as an additional insured and shall provide for blanket contractual liability coverage.

b. Workers' Compensation Insurance. Developer shall also provide, or cause to be provided, during periods when development and/or construction is actually occurring on the Subject Property, Workers' Compensation insurance as required by law, together with a contingent employer's liability endorsement in favor of City, covering employees of Developer, employees of any contractor, subcontractor, agent, or representative of Developer.

c. General Requirements for Insurance. If available, each policy of insurance carried by Developer hereunder shall provide that it may not be canceled without at least thirty (30) days prior written notice to the City. Upon request of City, Developer shall furnish to City a copy of each policy of insurance carried hereunder, or a certificate thereof, stating that such insurance is in full force and effect and, in the case of the public liability insurance, showing City named as an additional insured. Any insurance required to be maintained by Developer hereunder may be maintained under a so-called "blanket policy" insuring other Parties and other

locations, so long as the amount of insurance required to be provided hereunder is not thereby diminished.

Section 8.3 No Supersedure.

The provisions of this Article 8 shall not supersede and shall not be in addition to any requirements contained in any Existing Approval.

Article 9. General Provisions.

Section 9.1 Exhibits.

The following documents are referred to in this Agreement, attached hereto and made a part hereof by this reference:

<u>Exhibit</u>	<u>Description</u>
"A"	Legal Description of the Project
"B"	Depiction of the Project

References herein to "this Agreement" shall include all of the foregoing exhibits.

Section 9.2 Developer's Interest.

The Developer represents that the Subject Property is owned by Developer and that the Developer has control of the Subject Property described in Exhibits "A" & "B".

Section 9.3 Amendments of Agreement.

a. In General. This Agreement may be amended from time to time only upon the mutual written consent of City and Developer; provided, however, that in connection with the transfer of any portion of Developer's rights of obligations under this Agreement to another Developer, Developer and City may agree that the signature of such other Developer may be required to amend this Agreement insofar as such amendment would materially alter the rights or obligations of such other Developer hereunder.

b. Minor Amendments. Any amendment of this Agreement which does not relate to the term of this Agreement, permitted uses of the Project Site, provisions for the reservation or dedication of land, construction of improvements, the conditions, terms, restrictions, and requirements relating to discretionary Approvals or other discretionary actions or monetary exactions of Developer may, to the extent permitted by law, be approved and executed on behalf of City by the City Manager without the need for notice or public hearing.

Article 10. Miscellaneous.

Section 10.1 Project as a Private Undertaking.

It is specifically understood and agreed by and between the Parties hereto that the development of the Subject Property is a separately undertaken private development. No partnership, joint venture, or other association of any kind between the Developer, on the one hand, and the City on the other, is formed by this Agreement. The only relationship between the City and the Developer is that of a governmental entity regulating the development of private property and the owners of such private property.

Section 10.2 Consistency with Stockton General Plan.

The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety, and general welfare and is consistent with the Stockton General Plan.

Section 10.3 Construction.

This Agreement shall be subject to and construed in accordance and harmony with the Stockton Municipal Code, as it may be amended, provided that such amendments do not substantially alter the rights granted to the Parties by this Agreement.

Section 10.4 Obligations.

All the obligations of this Agreement are the essence of the Agreement.

Section 10.5 Notices.

Any notice or communication required hereunder between the City and the Developer must be in writing and may be given either personally, by overnight courier or by registered or certified mail, return receipt requested. If given by overnight courier or registered or certified mail, the same shall be deemed to have been given and received on the date of actual receipt by the addressee designated below as the party to whom the notice is sent. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to the City:

City of Stockton
425 North El Dorado Street
Stockton, CA. 95202
Attn: City Clerk
Telephone: (209) 937-8458
Facsimile: (209) 937-8447

With a Copy To:

City of Stockton
345 N. El Dorado Street
Stockton, CA 95202
Attn: Community Development Director
Telephone: (209) 937-8444
Facsimile: (209) 937-8893

If to Developer:

HOLMAN INVESTORS, LLC
P.O. Box 8596
Stockton, CA 95208
Attn: Matt Arnaiz
Telephone: (209) 956-9303
Facsimile (209) 956-5936

With a Copy To:

ARNAIZ DEVELOPMENT CO., INC.
Attn: Richard K. Denhalter Esq.
General Counsel
3400 Eight Mile Road
Stockton, CA 95212
Telephone: (209) 931-9740
Facsimile: (209) 931-9741

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

Any notice given to the Developer as required by this Agreement shall also be given to all other signatory Parties hereto and any lender which requests that such notice be provided. Any signatory party or lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

Section 10.6 Recordation.

No later than ten (10) days after the Effective Date of this Agreement, the Clerk of the City shall record a copy of this Agreement in the Official Records of the Recorder's Office of San Joaquin County. The Developer shall be responsible for all recordation fees, if any.

Section 10.7 Construction.

As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

Section 10.8 Jurisdiction and Venue.

The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

Section 10.9 No Obligation to Develop.

It is understood that Developer's development of the Project depends upon a number of factors including, but not limited to, the housing, commercial and industrial markets, the availability of financing, and the general economic climate of the area. Nothing in this Agreement shall be construed as requiring Developer to develop the Project, and any failure to develop the Project shall not be deemed a default of Developer under this Agreement. However, once Developer has begun actual construction of the Project, Developer shall diligently pursue completion of the Project.

Section 10.10 Waivers.

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

Section 10.11 Entire Agreement.

This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of 22 pages and Exhibits "A", "B" and "C", inclusive, which constitute the entire understanding and agreement of the Parties.

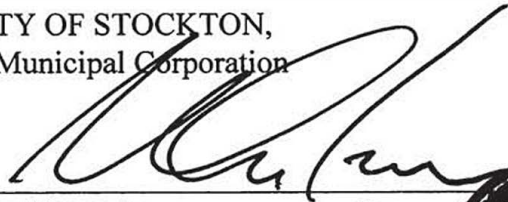
Section 10.12 Signatures.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

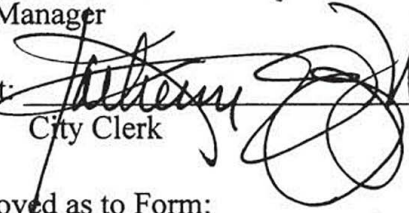
IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date first set forth above.

“CITY”

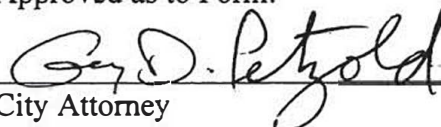
CITY OF STOCKTON,
A Municipal Corporation




 City Manager

Attest: 

 City Clerk

Approved as to Form:


 City Attorney



“DEVELOPER”

HOLMAN INVESTORS, LLC
A California Limited Liability Company

By: 

 Name: Matt Arnaiz
 Title: Managing Member

Approved as to Form:


 Developer's Attorney

(ACKNOWLEDGMENTS ATTACHED)

EXHIBIT "A"

**CANNERY PARK ANNEXATION
TO THE CITY OF STOCKTON,
SAN JOAQUIN COUNTY, CALIFORNIA**

All that portion of Sections 1, 2, 11 and 12, Township 2 North, Range 6 East, Mount Diablo Base and Meridian, more particularly described as follows:

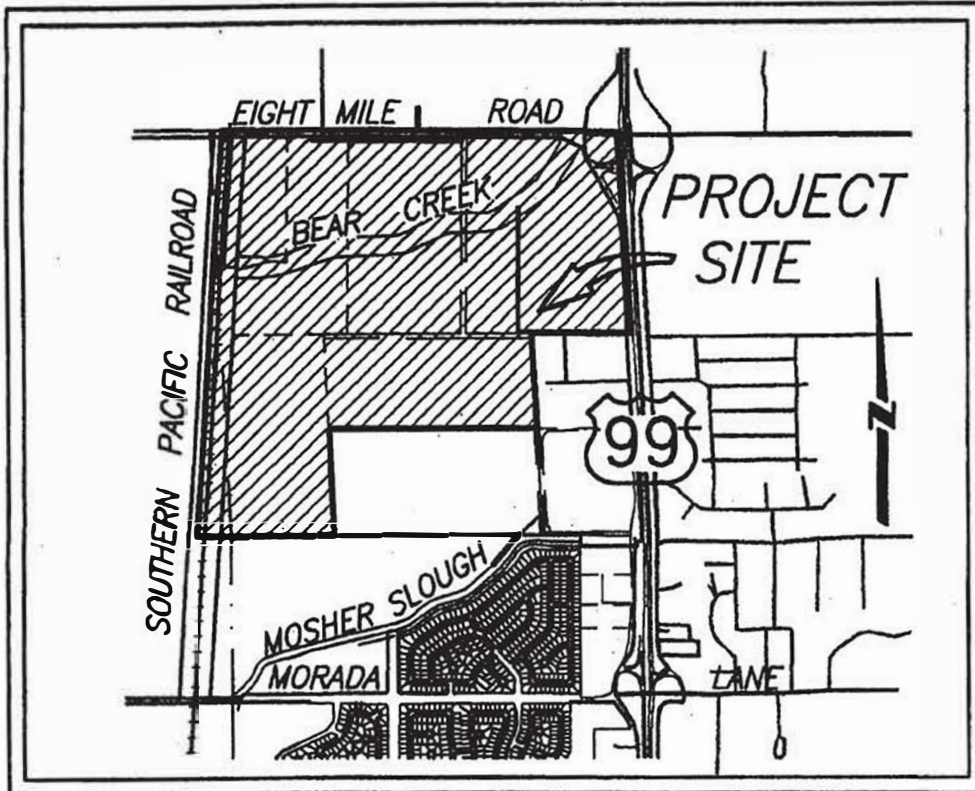
BEGINNING at the southwest corner of said Section 1, said point being on the existing City Limit Line of the City of Stockton;

- 1) thence along said City Limit Line, South 89°59'55" West 393.61 feet to the westerly line of Southern Pacific Railroad Company's 100-foot wide right-of-way;
- 2) thence leaving said City Limit Line, along said westerly line of the Southern Pacific Railroad Company's 100-foot wide right-of-way North 03°44'08" East 5323.85 feet to the north line of said Section 1;
- 3) thence continue North 03°44'08" East 40.06 feet to the northerly right-of-way line of 80-foot wide Eight Mile Road;
- 4) thence along said northerly right-of-way line, 40.00 feet northerly of, measured at right angle to, the north line of said Section 1, South 89°29'36" East 2445.82 feet;
- 5) thence continue along said northerly right-of-way line, 40.00 feet northerly of, measured at right angle to, the north line of said Section 1, South 89°30'08" East 2537.34 feet;
- 6) thence South 04°02'00" East 1055.53 feet;
- 7) thence South 06°36'46" East 281.25 feet to an angle point on the easterly right-of-way line of 47.50 foot wide South 99 Frontage Road, as shown on the Relinquishment Map recorded June 24, 1966, in Book 15, Page 27, State Highway Map Book, San Joaquin County Records;
- 8) thence along said easterly line, South 02°50'27" East 1347.66 feet to a point of intersection with the easterly prolongation of the southerly line of that certain 111.694 Acre parcel of land as shown on the Map of Survey, filed in Book 25 of Surveys, at Page 42, San Joaquin County Records;
- 9) thence along said easterly prolongation, and the southerly line of said 111.694 Acre parcel, North 89°53'31" West 1263.24 feet to the northeast corner of that certain 74.910 Acre parcel of land as shown on the Map of Survey, filed in Book 22 of Surveys, at Page 40, San Joaquin County Records said corner being on the centerline of the 60-foot wide Woodbridge Irrigation District right-of-way, as described in Book "A" of

- Deeds, Volume 58, at Page 215, San Joaquin County Records;
- 10) thence along said centerline, South 02°55'07" East 1227.53 feet to the existing City Limit Line of the City of Stockton;
 - 11) thence along the existing City Limit Line, South 89°57'40" West 2657.21 feet;
 - 12) thence continue along the existing City Limit Line, South 02°35'56" East 1408.96 feet to the south line of said Section 1;
 - 13) thence continue along the existing City Limit Line, also being the south line of said Section 1, North 89°53'54" West 1318.18 feet to the point of beginning.

Containing 489.40 Acres more or less.

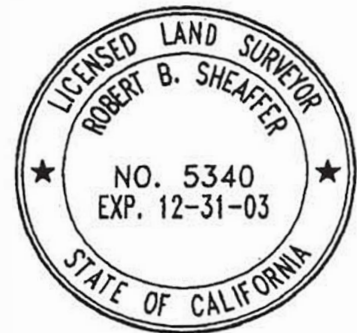
Bearings used in this description are based on the California Coordinate System-83, Zone III.



VICINITY MAP
NOT TO SCALE

LINE TABLE:

LINE	BEARING	DISTANCE
1	S 89°59'55" W	393.61'
2	N 3°44'08" E	5323.85'
3	N 3°44'08" E	40.06'
4	S 89°29'36" E	2445.82'
5	S 89°30'08" E	2537.34'
6	S 4°02'00" E	1055.53'
7	S 6°36'46" E	281.25'
8	S 2°50'27" E	1347.66'
9	N 89°53'31" W	1263.24'
10	S 2°55'07" E	1227.53'
11	S 89°57'40" W	2657.21'
12	S 2°35'56" E	1408.96'
13	N 89°53'54" W	1318.18'



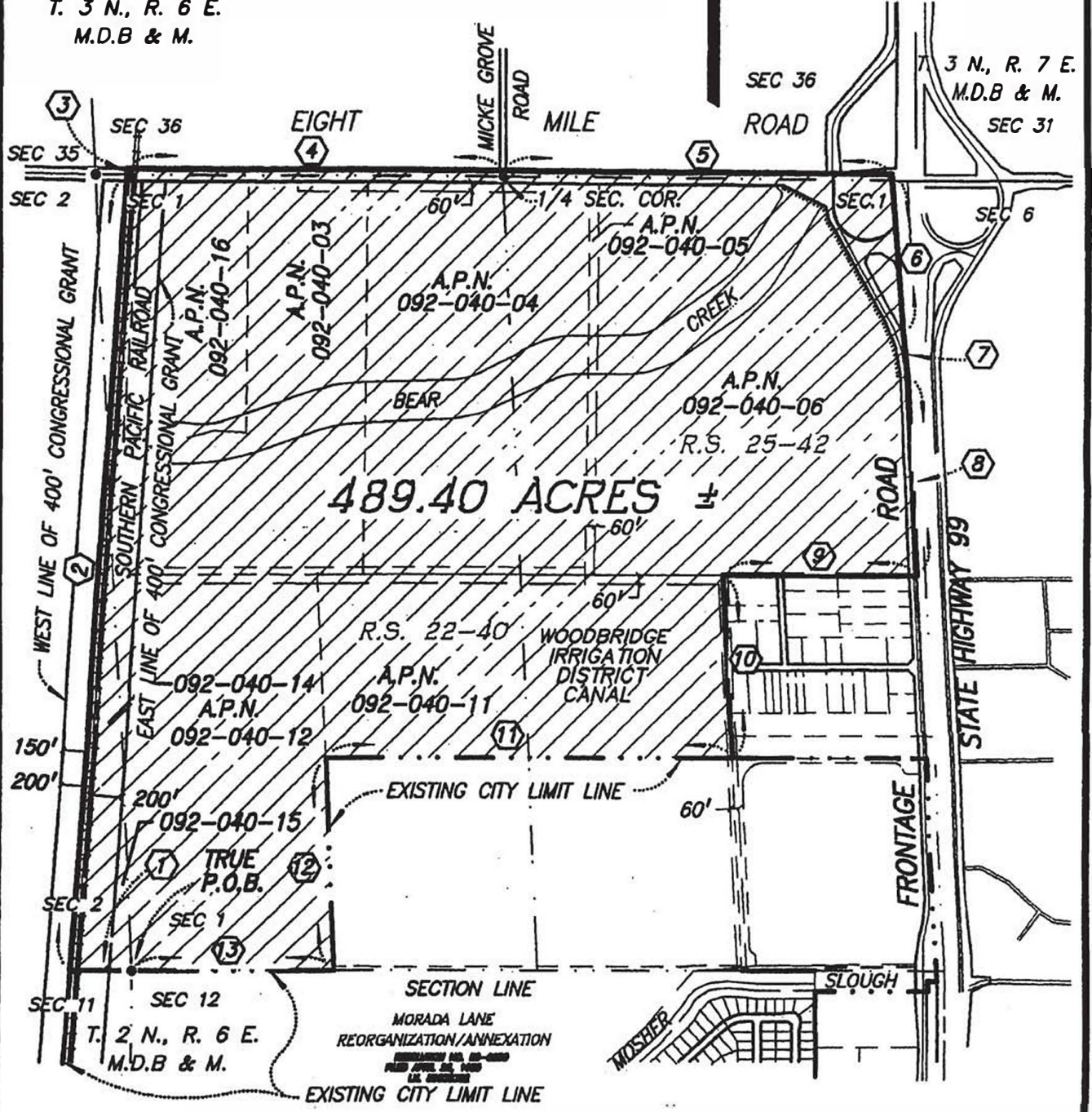
Drawn by: R.B.S. Date: JAN 28, 2003 Scale:	CANNERY PARK ANNEXATION TO THE CITY OF STOCKTON CITY OF STOCKTON DEPARTMENT OF PUBLIC WORKS	Approved by _____ City Engineer _____ Date: _____
P:\STOCKTON\12273400\EXHIBITS\AMEX		1 OF 2

LEGEND:

- STOCKTON CITY LIMIT LINE
- PROPOSED ANNEXATION LINE NUMBER, SEE SHEET ONE FOR DATA
- ① RESTRICTED ACCESS TO THE STATE OF CALIF.

SCALE 1" = 1000'

T. 3 N., R. 6 E.
M.D.B & M.



Drawn by: R.B.S.
Date: JAN 28, 2003
Scale: 1" = 1000'

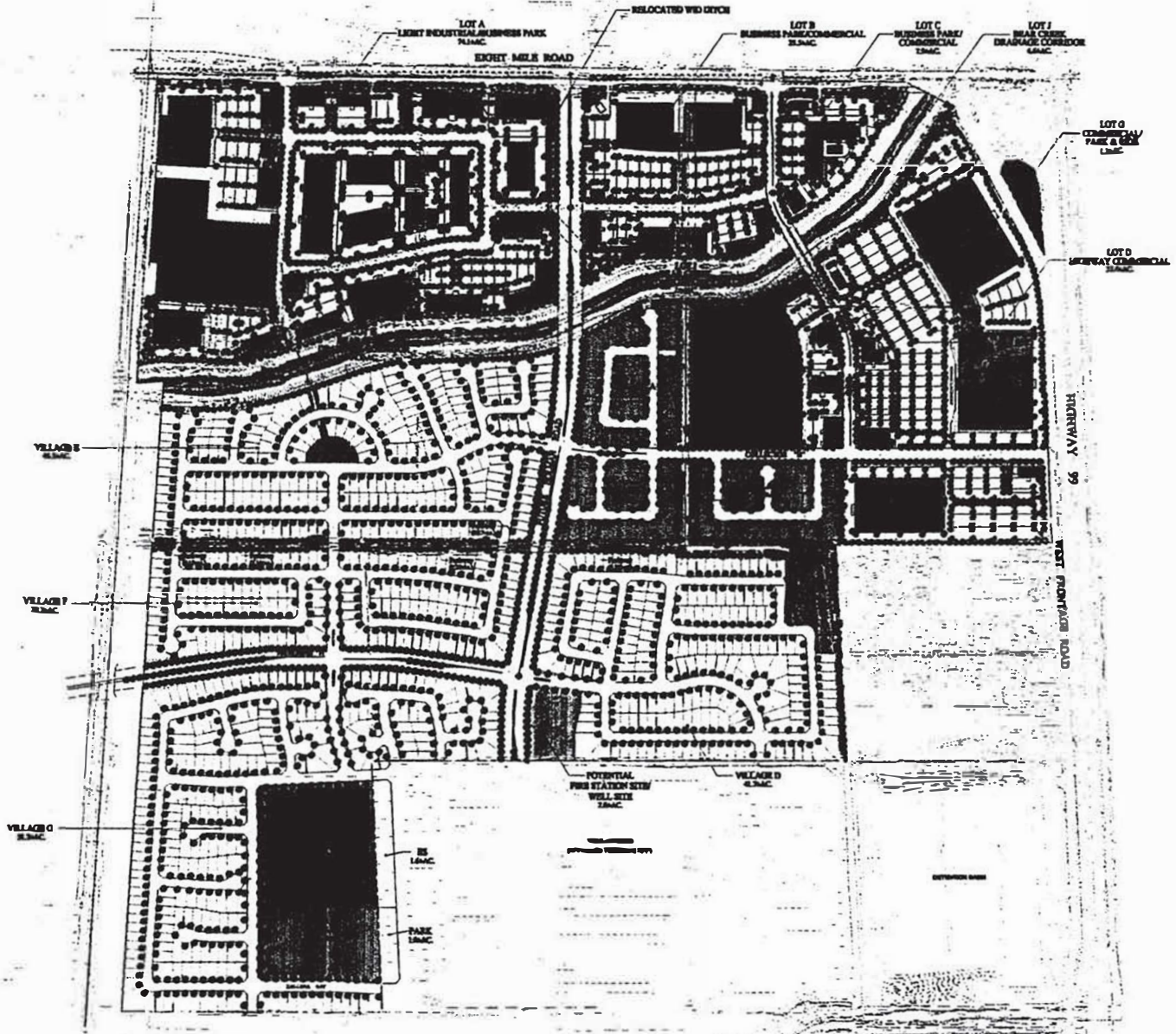
**CANNERY PARK
ANNEXATION
TO THE CITY OF STOCKTON**

CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

Approved by _____
City Engineer
Date: _____

CANNERY PARK

CITY OF STOCKTON, CALIFORNIA
MARCH 4, 2004



PROJECT NOTES

OWNER: HUNTER INDUSTRIAL LLC
 2000 50th STREET, SUITE 100
 STOCKTON, CA 95210
 PHONE: 209/498-4303

ARCHITECT: JEN
 2000 50th STREET, SUITE 100
 STOCKTON, CA 95210
 PHONE: 209/498-4303

ENGINEER: JEN
 2000 50th STREET, SUITE 100
 STOCKTON, CA 95210
 PHONE: 209/498-4303

PREPARED BY: JEN
 2000 50th STREET, SUITE 100
 STOCKTON, CA 95210
 PHONE: 209/498-4303

DATE: 03/04

SCALE: 1" = 100'

NOTES:
 1. ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS.
 2. ALL UTILITIES SHALL BE DEEPENED TO 48" BELOW FINISHED GRADE.
 3. ALL UTILITIES SHALL BE DEEPENED TO 48" BELOW FINISHED GRADE.
 4. ALL UTILITIES SHALL BE DEEPENED TO 48" BELOW FINISHED GRADE.

CANNERY PARK OVERALL LAND USE SUMMARY

Village	Zonal Land Use	Description	Units or SF	Acres (a)	Plots/Park Acres (p)	Density (g)
A	R1*	Residential (30 x 100)	88	10.1	1.1	8.7
B	R1*	Residential (30 x 100)	67	7.7	1.4	8.7
C	R1*	Residential (30 x 100)	94	9.7	1.4	8.7
D	R1	Residential (30 x 110)	208	41.7	5.4	5.0
E	R1	Residential (30 x 110)	228	45.6	2.3	5.0
F	R1	Residential (30 x 110)	144	29.2	1.4	5.0
G	R1	Residential (30 x 110)	258	51.7	10.6	5.0
	R1	Elementary School	10.1		10.1	
	R1	Park	10.1			
	R1	Fire Station/Well Site	11.7		1.0	18.0
	R3	Multi-family	210	2.0		
Subtotal			1,287	230.1	23.6	5.8
M1	Light Industrial/Business Park		1,452,508	74.1		0.46
C1	Business Park/Commercial		478,724	31.4		0.35
C2	Commercial/Office		59,605	5.5		0.25
C3	Highway Commercial		407,286	37.4		0.25
C4	Commercial/Office		132,859	12.2		0.25
C5	Commercial/Park & Ride			1.3		0.00
Subtotal			2,531,271	161.9		
Bear Creek Drainage Corridor				28.5		
Major Roadways				27.9		
TOTAL			1,287	2,531,271	48.4	

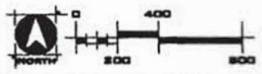


Exhibit B
ILLUSTRATIVE SITE PLAN

STATE OF CALIFORNIA }
 } ss.
COUNTY OF SAN JOAQUIN }

On August 30 2004, before me, Kathy A. Cabanya, personally appeared MATTHEW ARNAIZ, personally known to me {or proved to me on the basis of satisfactory evidence} to be the person{s} whose name{s} is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity {ies} and that by his/her/their signature{s} on the instrument the person{s} or the entity upon behalf of which the person{s} acted, executed the instrument.

WITNESS my hand and official seal.


Kathy A. Cabanya



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Joaquin } ss.

On Oct. 28, 2007 before me, Karen A. Costa, Notary Public,
Date Name and Title of Officer (e.g., "James Doe, Notary Public")
personally appeared Mark Lewis
Name(s) of Signer(s)

Personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
Karen A. Costa
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



This document is recorded for the benefit of the City of Stockton and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

When recorded, mail to:

Richard E. Nosky, Jr.
City Attorney
City of Stockton
425 North El Dorado St., 2nd Floor
Stockton, CA 95202-1997
Attn: Guy Petzold, Deputy City Attorney

THIS SPACE FOR RECORDER'S USE ONLY

**FIRST AMENDED AND RESTATED AGREEMENT
BY AND BETWEEN THE CITY OF STOCKTON
AND
HOLMAN INVESTORS, LLC**

WHEREAS, the Development Agreement ("DA 2-03"), dated September 14, 2004, was authorized by City of Stockton Ordinance No. 022-04, adopted September 14, 2004, effective October 14, 2004, and recorded on October 29, 2004, as Document No. 2004-246441; and

WHEREAS, the parties thereto entered into the Agreement with the expressed intention and expressed desire that the real property subject to the Agreement would be allowed to process development entitlements without subsequently enacted restrictions, promulgated by either the City Council or by a citizen initiative; and

WHEREAS, the intent and desire of the parties would be fully frustrated and defeated if the real property subject to the Agreement is allowed to process land use entitlement applications but then thwarted from implementing these subsequently approved land use entitlements due to restrictions imposed by either the City Council or by a citizen initiative; and

WHEREAS, the parties thereto desire to amend DA 2-03 to properly reflect their intent in entering into said DA 2-03; and

WHEREAS, the parties have agreed that this FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT (DA 2-03) properly reflects their original intent and desire of that said DEVELOPMENT AGREEMENT, DA 2-03, as set forth herein, and shall be duly approved and recorded in the office of the County Recorder of San Joaquin County.

NOW THEREFORE, the parties hereto agree as follows:

- 1. Section 8.4 of DA 2-03, is hereby added and shall be as follows:

Section 8.4 Timing of Development.

Except as set forth specifically in this Agreement, Developer shall not be required to initiate or complete development of any portion of the Project within any particular period of

3.28.06
Rec'd 06-01-04

time, nor shall Developer be required to delay development of the Project. Developer may respond to market conditions and other relevant factors in advancing or delaying the phasing and development of the Project as it determines, in its sole business judgment, to be necessary. Not in limitation of the foregoing, the Parties desire to avoid the result of the California Supreme Court's holding in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), where the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' Agreement, and therefore acknowledge that Developer shall have the right to develop the Project at such time as Developer deems appropriate within the exercise of its subjective business judgment. The time schedule, rate of development, or number of parcels developed in the Project shall not be constrained by enactments of City, whether by ordinance or by initiative, adopted subsequent to the approval of this Agreement and any amendment hereto.

2. All other provisions of DA 2-03 shall remain in full force and effect.

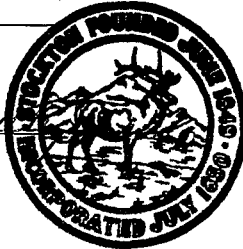
IN WITNESS WHEREOF, the City and Property Owner have executed this Agreement as of the date first set forth above.

CITY OF STOCKTON,
a political subdivision of the State of California

[Signature]
J. Gordon Palmer, Jr.
City Manager

Date: 4-14-06

Attest: [Signature]
City Clerk



Date: 4-20-06

Approved as to Form:

[Signature]
City Attorney

Date: 3-27-06

HOLMAN INVESTORS, LLC,
a California limited liability company

By: [Signature]
Name: Matt Arnaiz
Title: Member

Date: 3-17-06