

RESOLUTION NO. 2003-183

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF APR 15 2003

A RESOLUTION AUTHORIZING THE EXECUTION OF THREE ACQUISITION AGREEMENTS RELATED TO THE NORTH NATOMAS REGIONAL PARK

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

WHEREAS,

- A. On May 3, 1994, the City Council approved and adopted the North Natomas Community Plan ("NNCP") by Resolution No. 94-259. The Community Plan sets forth the land use designations and policies related to land use, circulation, infrastructure, and community facilities, including the designation of a 200+/- acre regional park in North Natomas to serve the community and the region. On August 9, 1994, the City Council approved and adopted the North Natomas Financing Plan ("NNFP"), by Resolution No. 94-495. The Council further updated the NNFP in 1999 and 2002. The NNFP sets forth the methods by which public land and infrastructure required by the NNCP will be funded, including the Regional Park Land Acquisition Program.
- B. On October 17, 2001, City filed a Complaint in Eminent Domain against the three property owners in the Sacramento County Superior Court, Case No. 01Aso6377, for the purpose of acquiring title to the Property in connection with City's project to establish a 200 +/- acre regional park in North Natomas. Property owners, through its legal counsel, filed appropriate legal responses to City's complaint.
- C. Pursuant to the California Eminent Domain Law, City has obtained possession of the Property. Property owners have lawfully withdrawn funds from the City's court deposit.
- D. The parties have been in disagreement as to the fair market value of the Property and have engaged in extensive negotiations in an effort to achieve a fair and just settlement of the eminent domain action.
- E. The parties have reached agreement on the terms and conditions of an amicable settlement, and mutually desire to buy their peace through the medium of the attached Agreement, which

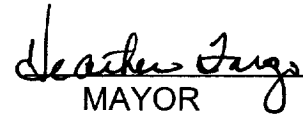
FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2003-183
APR 15 2003
DATE ADOPTED: _____

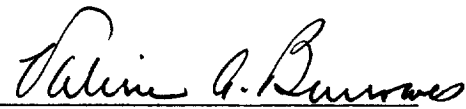
contains all of their agreed terms and conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO THAT:

1. The City Manager is authorized to execute the Agreements of Settlement of Eminent Domain Actions between the City and Lewis Operating Company, Inc., Lennar Communities, Inc., and Alleghany Properties, Inc. attached as Exhibit A, B, and C, respectively, for the purchase of the regional park property in North Natomas.


MAYOR

ATTEST:


CITY CLERK

FOR CITY CLERK USE ONLY

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AGREEMENT FOR SETTLEMENT OF EMINENT DOMAIN ACTION

This Agreement is entered into on January __, 2003, by and between the City of Sacramento, a charter municipal corporation ("City"), and Lewis Investment Company, LLC, a California limited liability company ("Landowner").

RECITALS

- a. Landowner is the successor in interest of LPROP Cougar, LLC, a Delaware limited liability company, and is the sole owner of fee title of real property located in the City of Sacramento, within the area covered by the North Natomas Community Plan. Landowner's real property is described as set forth in Exhibits A-1 and A-2 and is further depicted on the plat attached hereto as Exhibit A-4, copies of which are attached hereto and incorporated herein by this reference (the "Property"). The Property consists of 13.255 acres.
- b. Landowner was also the sole owner of fee title of real property in the City of Sacramento described as set forth in Exhibit A-3 and depicted on the plat attached hereto as Exhibit A-4, copies of which are attached hereto and incorporated herein by this reference (the "Library Parcel"). The Library Parcel consists of 2.932 acres. In anticipation of this Agreement, the parties previously entered into a separate agreement, whereby the Library Parcel was transferred from Landowner to City in exchange for certain Quimby Act credits equal to 2.932 acres. A copy of this separate agreement is attached hereto as Exhibit B and incorporated herein by this reference.
- c. On October 17, 2001, City filed a Complaint in Eminent Domain against Landowner and others in the Sacramento County Superior Court, Case No. 01AS06377, for the purpose of acquiring title to the Property and the Library Parcel in connection with City's project to establish a two hundred acre regional park, together with associated uses, in North Natomas (the "Litigation"). Landowner, through its legal counsel, has filed an appropriate legal response to City's complaint.
- d. Pursuant to the California Eminent Domain Law, City has obtained possession of the Property and the Library Parcel. Landowner has lawfully withdrawn from City's court deposit the sum of Eight Hundred Thousand Dollars (\$800,000.00).
- e. Lewis has previously paid Habitat Conservation Plan ("HCP") fees associated with development of the Property and the Library Parcel in the amount of One Hundred Eighteen Thousand Two Hundred and Forty-eight Dollars (\$118,248.00).

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- f. The parties have been in disagreement as to the fair market value of the Property and the Library Parcel, and have engaged in extensive negotiations in an effort to achieve a fair and just settlement of the eminent domain action.
- g. The parties have reached agreement on the terms and conditions of an amicable settlement, and mutually desire to buy their peace through the medium of this Agreement, which contains all of their agreed terms and conditions.

AGREEMENT

Now, therefore, the parties agree as follows:

- 1. **Recitals accurate.** The recitals set forth above are accurate and true, and are expressly made a part of this Agreement.
- 2. **Purchase and Sale.** Landowner agrees to sell the Property to City, and City agrees to purchase the Property from Landowner, on the terms and conditions set forth in this Agreement.
- 3. **Acquisition Valuation and Purchase Price.** The parties agree that the value of the Property and the Library Parcel is One Hundred Twenty Nine Thousand Dollars (\$129,000.00) per acre and that the purchase price for the Property shall be One Million Seven Hundred Nine Thousand Eight Hundred Ninety-five Dollars (\$1,709,895.00). ~~The parties agree that, for purposes of this Agreement, the value of the previously transferred Library Parcel is Three Hundred Seventy-eight Thousand Two Hundred Twenty-eight Dollars (\$328,228.00).~~
- 4. **Transfer of Title.** Landowner shall transfer title to the Property to City by execution of the grant deed in the form attached hereto as Exhibit C. City has obtained a preliminary title report for the Property dated October 29, 2002 and agrees to accept the Property subject to all liens, encumbrances, or other impediments identified in such report. Landowner warrants that the Property shall be transferred free and clear of all liens, encumbrances, or other impediments attaching to the Property subsequent to that date and prior to the date of recordation of the grant deed.
- 5. **Payment Terms.** The purchase price and reimbursement to Landowner for HCP fees previously paid, in the combined amount of One Million Eight Hundred Twenty-eight Thousand One Hundred Forty-three Dollars (\$1,828,143.00), are detailed in the Regional Park Acquisition Summary attached hereto as Exhibit D and shall be paid as follows:
 - A. City shall pay Landowner a cash payment in the amount of Eight Hundred Thousand Dollars (\$800,000.00), which is the amount that Landowner has

lawfully withdrawn from City's cash deposit during the eminent domain proceedings. Landowner acknowledges its actual receipt of this cash payment.

- B. City shall grant to Landowner credits against Landowner's Quimby Act requirements for Landowner's Lewis Creekside development project, for use by Landowner within the Creekside project, equal to 3.361 acres. For purposes of this Agreement, the value of such credits is Four Hundred Thirty-three Thousand Five Hundred Sixty-nine Dollars (\$433,569.00). The grant of such credits shall become effective automatically upon recordation of the grant deed identified in Section 4, above. A copy of this agreement and proof of recordation of the grant deed shall constitute sufficient evidence of this credit for any and all purposes.
 - C. City shall grant to Landowner credits against Landowner's North Natomas Regional Park Land Acquisition Fee obligations in the amount of Five Hundred Ninety-four Thousand Five Hundred Seventy-four Dollars (\$594,574.00), for use by Landowner within the North Natomas Financeing Plan area. The fee credits shall be ~~based upon the amount of applied against~~ the North Natomas Regional Park Land Acquisition Fee ~~at the time of close of Escrow~~ applicable at the time such fee is due and payable. The Fee Credits shall be assignable to Landowner's successors and assignees pursuant to established City policies and procedures, for use within the North Natomas Financeing Plan area. The grant of such credits shall become effective automatically upon recordation of the grant deed identified in Section 4, above. A copy of this agreement and proof of recordation of the grant deed shall constitute sufficient evidence of this credit for any and all purposes.
6. **Escrow.** Immediately following full execution of this Agreement, the parties shall open an escrow ("Escrow") with _____ Title Company ("Escrowholder") for purposes of transfer of title to the Property from Landowner to City, and payment of the balance of the Purchase Price.
- A. Close of Escrow. Escrow shall close, and the grant deed shall be recorded on or before February 28, _____, 2003. The parties may, by mutual written agreement, extend the closing time.
 - B. Escrow instructions. Upon opening of Escrow, the parties shall deposit a copy of this Agreement with Escrowholder. This Agreement shall serve as Escrow instructions to the Escrowholder. The parties shall, upon request of the Escrowholder, execute such Escrow instructions that are consistent with the provisions of this Agreement, as may reasonably be required.

- C. Fees, costs and taxes. City shall pay the cost of title insurance. Recording fees, transfer taxes and escrow fee shall be divided 50/50 between City and Lewis. Ad valorem property taxes shall be pro-rated as of the close of escrow. Each party shall deposit sufficient funds with the title company to pay its foregoing closing costs.

7. **Title/possession.**

- A. Possession. City is in lawful possession of the Property, and shall have the right to continue in lawful possession pending close of Escrow, with full right to grade or otherwise improve or build upon the Property.
- B. Water rights. Landowner shall, at close of Escrow and as part of the consideration for the Purchase Price, execute such documents as may reasonably be required to transfer ownership of any surface water rights that Landowner owns in connection with the Property.
- C. Title insurance. Escrowholder's title company shall, at close of Escrow, issue to City a policy of title insurance in standard California Land Title Association form with liability in the amount of the Purchase Price, showing title to the Property vested in City, subject only to exceptions, defects, and impediments approved by City.

8. **Representations and warranties.**

A. Landowner. Landowner makes the following representations and warranties, each and all of which shall survive the close of Escrow and recordation of the grant deed.

- (1) Landowner is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of California, and has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. Landowner warrants that the person or persons signing this Agreement on behalf of Landowner have the full legal power, authority, and right to execute and deliver this Agreement.
- (2) Seller has not been served (by means of formal, legal service of process as required by law) with any litigation and no arbitration proceedings have been commenced, which do or will affect any aspect of the Property or Landowner's ability to perform its obligations under this Agreement.

- (3) Seller has not been served (by means of formal, legal service of process as required by law), or been formally notified in writing by any governmental or quasi-governmental authority, and has no actual knowledge, that: (i) the Property or any adjoining property contains or may contain any "Hazardous Materials" in violation of any "Environmental Regulations" as defined below; or (ii) Landowner or its predecessors has or have stored, used, or maintained Hazardous Materials on, in, or under the Property in violation of any Environmental Regulations. In addition, to the best of Landowner's knowledge, but without any specific investigation therefore, there are no Hazardous Materials in any way relating to all or any portion of the Property or the area surrounding the Property.
- (4) As used in this Agreement, the term "Environmental Regulations" shall mean all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, ~~states and the State of California~~ or any political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments, and order relating to the protection of human health or the environment, including, without limitation: (i) all requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials, whether solid, liquid, or gaseous in nature, into the air, surface water, ground water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials, whether solid, liquid, or gaseous in nature; and (ii) all requirements pertaining to the protection of the health and safety of employees or the public.
- (5) As used in this Agreement, the term "Hazardous materials" shall mean (i) any flammable, explosive or radioactive materials, hazardous wastes, toxic substances, or related materials including, without limitation, substances defined as "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. 1801, et seq.; the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.

6901, et seq.; and in the regulations adopted and publications promulgated pursuant to said laws; (ii) those substances listed in the U.S. Department of Transportation Table, 49 C.F.R. 72.01 and amendments thereto or by the Environmental Protection Agency (or any successor agency) as hazardous substances, 40 C.F.R., Part 302 and amendments thereto; (iii) those substances defined as "hazardous wastes," "hazardous substances," or "toxic substances" in any similar federal, state, or local laws or in the regulations adopted or publications promulgated pursuant to any of the foregoing laws or which are otherwise regulated by any governmental authority, agency, department, commission, board, or instrumentality of the ~~U.S.~~United States, the State of California, or any political subdivision thereof; (iv) any pollutant or contaminant or hazardous, dangerous, or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, rule, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, all as amended; (v) petroleum or any by-products thereof; (vi) any radioactive material, including any source, special nuclear, or by-product material as defined in 42 U.S.C. 2011, et seq., as amended, and in the regulations adopted and publications promulgated pursuant to said law; (vii) asbestos in any form or condition; and (viii) polychlorinated byphenyls.

- (6) Landowner has neither engaged nor dealt with any broker or finder in connection with the sale of the Property in this transaction, and shall indemnify, defend, and hold City harmless from any and all claims by any party claiming to represent Landowner.
- (7) To the best of Landowner's actual knowledge, there are no easements, licenses, or legal or equitable interests in the Property that are not listed on the title reports held by City.
- (8) If prior to close of Escrow new events have occurred that were beyond the control of Landowner and that render any previously true representation or warranty untrue, Landowner shall, within three (3) days thereafter, disclose those matters by written notice to City. Upon receipt of that notice, City shall, within ten (10) days, elect to either terminate this Agreement, or purchase the Property notwithstanding the information received. If City elects to terminate this Agreement, the parties shall share Escrow costs and fees equally.

(9) Other than those express representations and warranties contained in this Agreement, Landowner makes no warranty or representation, express or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose.

B. City. City makes the following representations and warranties, each and all of which shall survive the close of Escrow and recordation of the grant deed.

(1) City has neither engaged nor dealt with any broker or finder in connection with the purchase of the Property in this transaction, and shall indemnify, defend, and hold Landowner harmless from any and all claims by any party claiming to represent City.

(2) City has the legal authority to enter into this Agreement and to consummate the purchase of the Property. City and the individuals who execute this Agreement on behalf of City have the full legal power, authority, and right to execute and deliver this Agreement.

(3) City has or will make its own investigations and is fully satisfied concerning the physical and environmental condition of the Property, the condition of title, or any other matter pertaining to the Property; and, other than the specific representations and warranties made by Landowner pursuant to this Agreement, City is not relying on any representations, warranties, or inducements of Landowner with respect to those matters. Accordingly, except for those specific representations and warranties of Landowner set forth in this Agreement, City is purchasing the Property in an "as is" condition.

2. **Indemnification.** Subject to any other provisions of this Agreement to the contrary, each party ("Indemnitor") agrees to indemnify and hold the other party ("Indemnitee") harmless from and against any claim, loss, damage, or expense, including any reasonable attorney fees, asserted against or suffered by the Indemnitee resulting from:

A.

B. Any breach by the Indemnitor of this Agreement;

C. Any liability of the Indemnitor with respect to the Property;

D. The inaccuracy or breach of any of the representations, warranties, or covenants made by the Indemnitor.

3. **Miscellaneous provisions.**

B. **Survival of close of Escrow.** All representations, warranties, agreements, and obligations contained in or relating to this Agreement shall survive the close of Escrow and the recordation of the grant deed and shall not merge therein unless otherwise specifically stated in this Agreement.

C. **Notices.** All notices to be given pursuant to this Agreement shall be either: (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent by telecopy transmittal. If sent via certified or registered mail, receipt shall be deemed effective forty eight (48) hours after being deposited in the United States mail. If sent via telecopy transmission, a confirming copy shall be sent to the sender, and receipt of the telecopy transmission shall be deemed made twenty-four (24) hours after the sending thereof. If sent via overnight courier, receipt shall be deemed effective twenty-four (24) hours after the sending thereof. All notices to be given pursuant to this Agreement shall be given to the parties at the following respective address:

To City: City of
Sacramento, City Manager
915 I Street, First Floor
Sacramento CA 95814

Copy to: City Attorney,
City of Sacramento
980 Ninth Street, Suite 1000
Sacramento CA 95814

To Landowner: William B.
Mellerup
Lewis Investment Company, LLC
9216 Kiefer Blvd, Suite 8
Sacramento CA 95826

Copy to: Larry C.
Larsen
Law Offices of Gregory D. Thatch
1730 I Street, Suite 220
Sacramento CA 95814

D. **Entire Agreement.** This Agreement and the exhibits attached hereto, represent the entire Agreement between the parties in connection with the

transaction contemplated hereby and the subject matter hereof. This Agreement supersedes and replaces any and all prior and contemporaneous agreements, understandings, and communications between the parties, whether oral or written, with regard to the subject matter hereof. There are no oral or written agreements, representations, or inducements of any kind existing between the parties relating to this transaction that are not expressly set forth herein. This Agreement may not be modified except by a written agreement signed by both City and Landowner.

- E. Binding effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, administrators, successors in interest, and assigns.
- F. Waiver. No waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision herein or a consent to any subsequent breach of the same or another provision.
- G. Captions and headings. The captions and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of this Agreement.
- H. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.
- I. Governing law. This Agreement has been prepared, negotiated, and executed in, and shall be construed in accordance with, the laws of the State of California. Any action or proceeding relating to or arising out of this Agreement shall be filed, if a State action, in the Superior Court of the State of California for the County of Sacramento, or if a Federal action, in the United States District Court for the Eastern District of California.
- J. Attorney's fees.
 - (1) Each party shall bear its own legal costs and expenses in connection with the Litigation, and with regard to negotiation and preparation of this Agreement.
 - (2) If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action or proceeding, on trial or appeal, shall be entitled to its

reasonable attorney's fees to be paid by the losing party as fixed by the court or arbitrator, as the case may be.

- K. Time of Essence. Time is of the essence with respect to all matters contained in this Agreement.
- L. Invalidity of any provision. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under any present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions shall not be affected thereby.
- M. Drafting of Agreement. City and Landowner acknowledge that this Agreement has been negotiated at arm's length, and that each party has been represented by independent counsel.
- N. No third party beneficiary rights. This Agreement is entered into for the sole benefit of City and Landowner. No other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under, or to this Agreement.
- O. Dismissal of Litigation. Upon close of Escrow, the parties agree to take all necessary steps to cause the dismissal of the Litigation, and to execute all documents reasonably required for full dismissal with prejudice of Landowner and its predecessor, LPROP Cougar, LLC..

In witness whereof, the parties hereto have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

CITY

BY: _____
City Manager

Approved as to form:

City Attorney

Attest:

City Clerk

LANDOWNER

LEWIS INVESTMENT COMPANY, LLC
a California limited liability company

By: Lewis Operating Corporation,
a California corporation,
its Sole Manager

By: _____
Print Name: _____

And

By: _____
Print Name: _____

**The agreements referenced in
Resolution 2003-183
are City Council Agreements 2003-048
through 2003-050**