City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: March 17, 2009

SUBJECT: Approval of Purchase Agreement for the SLSP Park N2 Land, Project No. 05-27

Report in Brief

On February 7, 2006, Council approved the Spring Lake Specific Plan Park N2 Master Plan. The City Council is scheduled to consider approval of the plans and specification and advertising for bids for the Spring Lake Specific Plan (SLSP) N2 Park on the March 17 agenda under a separate action.

The SLSP Park N2 is the first of four parks to be built in the specific plan area. It is an 8-acre neighborhood park located between Miekle Avenue, Ortiz Avenue, Camacho Way, and a future school site.

Staff recommends that the City Council approves the attached Purchase Agreement for the SLSP Park N2 Land, Project No. 05-27 and authorizes the advance appropriation of $200,000 from the FY 2009-10 capital program fund an unanticipated shortfall as described herein.

Background

The SLSP Park N2 is the first of 4 parks to be built in the specific plan area. It is an 8-acre neighborhood park located between Miekle Avenue, Ortiz Avenue, Camacho Way, and a future school site.

Features of the 2004 Parks Master Plan Update for Neighborhood Park N2 included a picnic area, play apparatus, and restrooms. In response to comments received from the public, the Parks and Recreation Commission, and City staff, the list of features for Neighborhood Park N2 was expanded to include off-street parking, shade structures, water play feature, bicycle parking, volleyball, and dog exercise area. The Commission conducted a Public Hearing for Park N2 on November 28, 2005, to receive public input concerning park design. The plan was modified in response to comments received. The Commission's Facilities Subcommittee previewed the revised plan before presentation to the Commission on January 23, 2006. The Commission approved the plan with a minor modification, and recommended that Council consider approval of the plan.

On February 7, 2006, Council reviewed and approved the Spring Lake Specific Plan (SLSP) Park N2 Master Plan, which is attached.

In response to the concerns expressed by many Spring Lake residents, staff has agreed to not include the dog exercise area in the Base Bid as part of the Phase 1 project. Staff is working with Spring Lake residents who support inclusion of the dog exercise area and the residents who expressed concerns regarding this feature to form a working group that will review its feasibility and desirability. The outcome of this process will determine whether or not it will remain in the park master plan.

Discussion

City staff has been negotiating with the three developers that jointly own the Park N2 site, and have reached agreement on a price that reflects current market conditions. Related issues associated with the previous payments due from developers are being reviewed by staff and the City Attorney and will, as appropriate, be addressed through separate actions.

An additional $200,000 is required to complete this purchase. The FY 08/09 budget included $800,000 for the purchase of land. However, project management and design services associated with completing the construction documents were not factored into the estimate and have already been expended in order to prepare the project for the bid call. Therefore, the additional advanced funds are necessary in order to purchase the land. Staff is proposing to advance these funds from the FY 09/10 capital program approved by the City Council on January 20, 2009. This action will reduce the $2,300,000 approved for 09/10 to $2,100,000, which will be available for construction. Due to budget constraints, and the latest estimate of probable construction costs prepared by Stantec, staff has adjusted the scope of the project, to include the following items in the Base Bid:

1. Demolition and Site Preparation
2. Grading and Drainage
3. Site Utilities and Electrical
4. Concrete Walkways, Driveway, and Curbs
5. Decomposed Granite and Rubberized Play Surfacing
6. Site Furnishings - Benches, Picnic Tables, Trash Receptacles, Fencing, and Play Equipment
7. 1 Large Picnic Shade Structure
8. Landscaping - Trees, Turf and Irrigation

Three Add Alternative Bid Items will be included to allow the City flexibility in awarding the project, based on bid prices for the Base Bid and Alternates. Those items in priority order are as follows:

Add Alternates	#1	Additional Picnic Tables and Benches and 2 Shade Structures
	#2	Water Play Area
	#3	Parking Lot

Environmental Assessment

The development of Park N2 is consistent with the Spring Lake Specific Plan and was reviewed as part of the Specific Plan EIR. As a result, no additional analysis is required in order to purchase the park site.

Fiscal Impact

The purchase price of the N2 Park site will be $705,456.80. This amount was budgeted for this purpose in the FY 08/09 budget. All costs associated with the N2 Park, including the purchase price, additional funds for the construction documents ($200,000) and the construction itself (estimated at ($2.1 million) are funded by development fees paid by Spring Lake developers. There is no impact on the General Fund.

Public Contact

Posting of the City Council agenda.

Recommendation for Action

Staff recommends that the City Council approves the attached Purchase Agreement for the SLSP Park N2 Land, Project No. 05-27 and authorizes the advance appropriation of $200,000 from the FY 2009-10 capital program fund an unanticipated shortfall as described herein.

Prepared by: Daniel W. Gentry, Director
Parks and Recreation

Reviewed by: Andrew Morris
City Attorney

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Mark G. Deven
City Manager

Attachments: Purchase Agreement for SLSP Park N2 Land

AGREEMENT OF PURCHASE AND SALE
AND
JOINT ESCROW INSTRUCTIONS

This **AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS** ("Agreement") is made as of February 24, 2009 by and between HTW West Ventures, LLC, a Delaware limited liability company ("Seller"), and the City of Woodland, a California municipal corporation ("Buyer").

RECITALS

A. **WHEREAS**, Seller is the owner of approximately 7.95 acres of land located in the City of Woodland, County of Yolo, State of California, commonly known as Yolo County Assessor's Parcel No. 042-010-082-1, Woodland, California, and legally described on **Exhibit A** attached hereto and incorporated herein by reference ("Land"), together with all improvements thereon and appurtenances thereto ("Improvements"). (The Land and Improvements are hereinafter collectively referred to as the "Real Property.").

B. **WHEREAS**, Seller desires to sell the Real Property to Buyer, and Buyer desires to purchase the Real Property from Seller, all on the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereto agree as follows:

1. PURCHASE AND SALE. Seller agrees to sell the Real Property to Buyer, and Buyer agrees to purchase the Real Property from Seller, on the terms and conditions set forth in this Agreement.

2. PURCHASE PRICE.

2.1 The total purchase price ("Purchase Price") for the Real Property shall be Seven Hundred Five Thousand Four Hundred Fifty-Six and 80/100 Dollars ($705,456.80).

2.2 The Purchase Price shall be payable by Buyer to Seller and Seller's designees as follows:

(a) The cash sum of Seventy Thousand Five Hundred Forty-Five and 68/100 Dollars ($70,545.68) shall be deposited in Escrow (as defined in section 10.1 hereinbelow) upon the opening thereof, to be held by Escrow Holder (as defined in section 10.1 hereinbelow) in an account at a banking institution which is FDIC insured, with interest accruing to the credit of Buyer (the above-mentioned cash sum shall be referenced throughout this Agreement as the "Deposit").

(b) On or before the Close of Escrow (as defined in Section 10.2 hereinbelow), Buyer shall deposit with Escrow Holder (as defined in section 10.1 hereinbelow) the balance of the Purchase Price in cash or in immediately available funds.

3. CONDITION OF TITLE TO PROPERTY

3.1 Title to the Real Property shall be conveyed to Buyer upon the Close of Escrow (as defined in section 10.2 hereinbelow).

3.2 Title to the Real Property shall be conveyed to Buyer by Grant Deed (on the standard form Grant Deed of Fidelity National Title Company), free and clear of all liens except for (i) liens securing real property taxes and assessments (which constitute liens not yet due and payable); and (ii) such other exceptions and reservations shown on a Preliminary Title Report ("Preliminary Report") issued by Fidelity National Title Company ("Title Company") which are approved by Buyer. (All exceptions to title permitted pursuant to this section 3 are referred to in this Agreement as "Permitted Exceptions.") Seller agrees to furnish Buyer with a copy of the Preliminary Report, together with a copy of all recorded exceptions to title, on or before March 4, 2009.

3.3 Buyer shall approve or disapprove each exception shown on the Preliminary Report (each an "Exception") within three (3) business days following the receipt of the Preliminary Report. Buyer's failure to object within such period shall be deemed to be a disapproval of the Exceptions. The Exceptions approved by Buyer hereunder shall be referred to as the "Permitted Exceptions."

3.4 If any Exception is disapproved or deemed disapproved (each a "Disapproved Exception"), Seller shall have the right, but not the obligation, within five (5) days following expiration of the 3-business-day period provided under section 3.4 hereinabove, to cause each Disapproved Exception to be discharged, satisfied, released, or terminated, as the case may be, of record, and in a form that is reasonably satisfactory to Buyer and Escrow Holder, all at Seller's sole cost and expense. Seller authorizes Escrow Holder to disburse from the Deposit the sum sufficient to discharge any Disapproved Exception that may be discharged only by the payment of money. If Seller is unable or unwilling to obtain a discharge, satisfaction, release, or termination of any Disapproved Exception within the period specified above, then this Agreement shall automatically terminate two (2) business days after expiration of the 5-day period for curing the Disapproved Exceptions or after Seller advises Buyer in writing that Seller is unable or unwilling to cause such discharge, satisfaction, release, or termination, whichever occurs first, unless within such 2-business-day period Buyer waives in writing such Disapproved Exception, in which event such Disapproved Exception shall be deemed a Permitted Exception under this Agreement. If this Agreement terminates pursuant to the foregoing sentence, then Seller shall pay all charges of the Escrow Holder in connection with this transaction, including the cost of the Survey; and the parties shall be relieved of all further obligations and liabilities to each other under this Agreement except as otherwise provided herein, and all funds and documents deposited with Escrow Holder shall promptly be refunded or returned, as the case may be, by Escrow Holder to the depositing party.

3.5 Title to the Real Property shall be evidenced by the commitment of the Title Company to issue a standard California Land Title Association policy of title insurance with liability in the amount of the Purchase Price showing title to the Real Property vested in Buyer subject only to the Permitted Exceptions.

4. FEASIBILITY PERIOD

4.1 During the period commencing on the date of this Agreement and terminating on March 20, 2009 ("Feasibility Period"), Buyer shall undertake at Buyer's expense an inspection of the Real Property; a review of the physical condition of the Real Property, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Materials (as defined in section 6.1.12(b) hereinbelow), if any, and archeological information relating to the Real Property; and a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations ordinances, and laws affecting the Real Property. Within five (5) days following the full execution of this Agreement by both parties, Seller shall deliver to Buyer copies of all architectural plans, surveys, specifications, and other documents pertaining to the physical, geological, or environmental condition of the Real Property which are owned by or in the possession of Seller.

4.2 If Buyer's environmental consultant requires additional time to determine the existence and extent of any Hazardous Materials (as defined in section 6.1.12(b) hereinbelow),on or in the vicinity of the Real Property, Buyer shall have the right, exercisable by delivering written notice to Seller prior to the expiration of the Feasibility Period, to extend the Feasibility Period for up to five (5) days to complete the investigation. If Buyer disapproves of the results of the inspection and review, Buyer may elect, on or prior to the last day of the Feasibility Period, or any extension thereof, to terminate this Agreement by giving Seller written notification and the Deposit, together with all interest, shall be returned to Buyer. If Buyer fails to properly notify Seller of the intent to terminate this Agreement, Buyer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

5. CONTINGENCIES

5.1 Buyer's obligation to purchase the Property is subject to the following contingencies described in subparagraphs (a) through (g) below in this section 5.1 ("Contingencies"). Each and all of the following Contingencies are for the sole benefit of Buyer and may be waived or deemed satisfied by Buyer in Buyer's sole and absolute discretion.

(a) Buyer's review and approval of the Preliminary Report and each Exception shown or reflected therein pursuant to section 3 hereinabove.

(b) Buyer's inspection, examination, and approval of the physical condition of the Real Property as provided in section 4 hereinabove. Buyer shall have access to the Real Property at reasonable times and shall have the right to conduct, at Buyer's expense, soil tests, engineering feasibility studies, environmental investigations and such other studies with respect to the physical condition of the Real Property as Buyer may desire. Buyer shall have the duration of the Feasibility Period or any extension thereof in which to conduct such tests and studies and to give written notice to Seller of any conditions unacceptable to Buyer as provided in section 4 hereinabove. Buyer shall hold and save Seller harmless from and against any and all loss, cost, damage, liability, injury or expense, arising out of or in any way related to damage to property, injury to or death of persons, or the assertion of lien claims caused by such entry, inspection and implementation of soil tests, environmental investigations and other studies with

respect to the physical condition of the Real Property.

(c) Buyer's determination that zoning and other governmental regulations affecting the use of the Real Property are satisfactory for Buyer's intended use. Buyer shall have until March 20, 2009 to make such determination and to give written notice to Seller of any zoning or governmental regulations which are unacceptable to Buyer.

(d) Seller's representations and warranties in this Agreement being correct as of the date of this Agreement and as of the Close of Escrow.

(e) Seller's performance of all obligations under this Agreement.

(f) Escrow Holder being prepared to issue the Title Policy on the Close of Escrow, subject only to the Permitted Exceptions.

(g) No effective or pending moratorium, subdivision restriction, access restriction, withdrawal or modification of approvals, or other governmental change outside of the control of Buyer which would prevent or impede Buyer's proposed use or development of the Real Property.

5.2 If Buyer disapproves of the satisfaction of any of the Contingencies within the applicable time period(s) provided hereinabove, Buyer's sole remedy shall be to terminate this Agreement, and Seller shall have no obligation to remedy any of the Contingencies which Buyer disapproves. If this Agreement terminates as a result of the failure of the satisfaction of any of the Contingencies, all sums and documents deposited in Escrow shall be returned to the parties who respectively deposited the same, and Buyer and Seller shall each pay one-half (1/2) of the Escrow costs.

5.3 If Buyer fails to give written notice to Seller of its disapproval of any of the Contingencies within the applicable time period(s) set forth hereinabove, it shall conclusively be deemed that Buyer has waived such contingency, and such contingency shall conclusively be deemed satisfied.

5.4 Seller's obligation to perform under this Agreement is subject to the following condition: Buyer's performance of all of the obligations which it is required to perform pursuant to this Agreement.

6. REPRESENTATIONS AND WARRANTIES BY SELLER

6.1 Seller makes the representations and warranties in this paragraph 6, each and all of which shall survive any and all inquiries and investigations made by Buyer and shall survive the Close of Escrow and recordation of the Grant Deed.

6.1.1. Seller has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. Seller, and the specific individual(s) signing this Agreement on behalf of Seller, represent and warrant that such individual(s) has or have the full legal power, authority and right to execute and deliver this Agreement.

6.1.2 Neither the entering into this Agreement nor the performance of any of Seller's obligations under this Agreement will violate the terms of any contract, agreement or instrument to which Seller is a party.

6.1.3 Seller has not received any formal written notice of any pending change in zoning from any governmental or quasi-governmental authority, which change would materially affect the present zoning of the Land or the present use of the Real Property. The term "formal written notice" as used in this Agreement shall mean that kind and method of notice which must legally be given to the owner of the Real Property.

6.1.4 Seller has not received any formal written notice of any pending widening, modification or realignment of any street or highway contiguous to the Real Property or any existing or proposed eminent domain proceeding which would result in a taking of all or any part of the Real Property.

6.1.5 Seller has not received any formal written notice that any of the easements, covenants, conditions, restrictions or agreements to which the Real Property is subject interferes with or is breached by the use or operation of the Real Property as presently used and operated.

6.1.6 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 Real Property or Seller's ability to perform Seller's obligations under this Agreement.

6.1.7 Seller has not received any formal written notice of any presently uncured violation of any law, ordinance, rule or regulation (including, but not limited to, those relating to zoning, building, fire, health and safety) of any governmental, quasi-governmental authority bearing on the construction, operation, ownership or use of the Real Property.

6.1.8 There are not any written commitments to, or written agreements with, any governmental or quasi-governmental authority or agency materially affecting the Real Property which have not been heretofore disclosed by Seller to Buyer in writing.

6.1.9 The Real Property is free and has always been free from Hazardous Materials and is not and has never been in violation of any Environmental Regulations.

6.1.10 There are no buried or partially buried storage tanks located on the Real Property.

6.1.11 Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Real Property or any property adjoining the Real Property are or have been in violation of any Environmental Regulations, or informing Seller that the Real Property or any property adjoining the Real Property is subject to investigation or inquiry regarding Hazardous Materials or the potential violation of any Environmental Regulations.

6.1.12 As used in this Agreement, the terms "Environmental Regulations" and "Hazardous Materials" shall have the following meanings:

(a) "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 political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders 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, groundwater 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.

(b) "Hazardous Materials" shall mean (i) any flammables, 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. Sec. 9601, et seq.; the hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; and in the regulations adopted and publications promulgated pursuant to said laws; (ii) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 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 and publications promulgated pursuant to any of the foregoing laws or which otherwise are regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States of America, 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, 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 at 42 U.S.C. Sections 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 biphenyls.

6.1.13 There is no monitoring program required by the Environmental Protection Agency ("EPA") or any similar state agency concerning the Real Property.

6.1.14 No toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under, or at the Real Property, whether by accident, burying, drainage, or storage in containers, tanks, or holding areas, or by any other means.

6.1.15 The Real Property has never been used as a dump or landfill.

6.1.16 Seller has disclosed to Buyer all information, records, and studies in Seller's possession in connection with the Real Property concerning Hazardous Materials.

6.1.17 Until the Close of Escrow, the Real Property will continue to be operated in substantially the same manner as operated as of the date of this Agreement. Seller will not do or cause anything to be done which would change, alter or modify the operation of the Real Property in the manner in which it is operated as of the date of this Agreement, without the prior written consent of Buyer.

6.1.18 Seller has neither engaged nor dealt with any broker or finder in connection with the sale contemplated by this Agreement.

6.1.19 No condition on the Real Property violates any health, safety, fire, environmental, sewage, building, or other federal, state, or local law, code, ordinance, or regulation.

6.1.20 No leases, licenses, or other agreements allowing any third party rights to use the Real Property are or will be in force.

6.1.21 There are no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Real Property.

6.1.22 There are no natural or artificial conditions upon the Real Property or any part of the Real Property which could result in a material and adverse change in the condition of the Real Property.

6.1.23 Any information which Seller has delivered to Buyer, either directly or through Seller's agents, is accurate, and Seller has disclosed all material facts concerning the operation, development, or condition of the Real Property.

6.1.24 Seller will not alter the physical condition of the Real Property from and after the date of this Agreement, reasonable wear and tear excepted. If, through no fault of Seller, the physical condition of the Real Property is different on the date scheduled for the Close of Escrow than it is as of the date of this Agreement, the terms and conditions of section 6.3 hereinbelow shall apply.

6.2 Seller shall promptly notify Buyer of any facts which would cause any of the representations or warranties contained in this Agreement to be untrue as of the Close of Escrow and shall deliver to Buyer at the Close of Escrow a certificate ("Closing Certificate") in the form of the attached **Exhibit B** which is incorporated herein by reference, confirming that the representations and warranties contained in this Agreement continue to be true as of the Close of Escrow. The obligations of Buyer to consummate the transaction contemplated are conditioned upon the delivery by Seller of the Closing Certificate. If Buyer reasonably concludes that a fact materially and adversely affects the Real Property, Buyer shall have the option to terminate this Agreement by delivering written notice to Seller and Escrow Holder. If Buyer terminates this Agreement pursuant to this section 6.2, Escrow Holder shall, within ten (10) days following receipt of Buyer's notice to terminate, return the Deposit and all accrued interest to Buyer and cancel the Escrow.

6.3 If, prior to the Close of Escrow, new events have occurred which were beyond the control of Seller and which render any previously true representation or warranty untrue, Seller shall, within two (2) days thereafter, disclose those matters by written notice to Buyer. Buyer shall have five (5) business days after the earlier of (i) such disclosure; or (ii) Buyer's independent discovery that such representation or warranty has become untrue, to elect, in its sole and absolute discretion, and as its sole remedy, by written notice to Seller within said 5-business-day period, whether (1) to purchase the Real Property or (2) terminate this Agreement. If Buyer elects to terminate this Agreement pursuant to this paragraph 6.3, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate this Agreement, and all sums and documents deposited in Escrow shall be returned to the parties who deposited the same, and Seller and Buyer shall each pay one-half (1/2) of Escrow costs. If Buyer fails to notify Seller and Escrow Holder of its election to terminate this Agreement within the 5-business-day time period provided hereinabove, Buyer shall be deemed to have accepted the modified representations and warranties and elected to purchase the Real Property.

6.4 Seller shall indemnify Buyer and shall defend and hold Buyer harmless from all loss, cost, liability, damage, or other injury, including without limitation, attorney's fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by reason of, or in any manner resulting from, the breach of any warranties or representations contained in this Agreement, and all third-party claims arising out of or related to any facts or circumstances with respect to the period prior to the Close of Escrow.

7. SELLER'S COVENANTS

7.1 Commencing with the full execution of this Agreement by both parties and until the Close of Escrow, Seller shall not permit any liens, encumbrances, or easements to be placed on the Real Property, other than the Permitted Exceptions, nor shall Seller enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Real Property that would be binding on Buyer or the Real Property after the Close of Escrow without the prior written consent of Buyer.

7.2 Commencing with the full execution of this Agreement by both parties and until the Close of Escrow, Seller shall not permit any act of waste or act that would tend to diminish the value of the Real Property for any reason, except that caused by ordinary wear and tear.

8. INDEMNIFICATION

8.1 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 attorneys fees (including attorneys fees on appeal), asserted against or suffered by the Indemnitee resulting from: (a) any breach by the Indemnitor of this Agreement; (b) any liability of the Indemnitor with respect to the Real Property, as provided in section 9 hereinbelow; or, (c) the inaccuracy or breach of any of the representations, warranties or covenants made by the Indemnitor.

8.2 Indemnitee shall submit any claim for indemnification under this Agreement to the Indemnitor in writing within a reasonable time after Indemnitee determines that an event has

occurred which has given rise to a right of indemnification under this section 8 and shall give Indemnitor a reasonable opportunity to investigate and cure any default of Indemnitor under this Agreement and eliminate or remove any claim by a third party. Notwithstanding the foregoing, if the nature of Indemnitor's default or the third party claim is such that it would be impractical or unreasonable to give Indemnitor an opportunity to investigate and cure such default and remove such claim, Indemnitee need not give Indemnitor such opportunity.

8.3 If such claim for indemnification relates to a claim or demand presented in writing by a third party against Indemnitee, Indemnitor shall have the right to employ counsel reasonably acceptable to Indemnitee to defend any such claim or demand, and Indemnitee shall make available to Indemnitor, or its representatives, all records and other materials in its possession or under its control reasonably required by Indemnitor for its use in contesting such liability. If Indemnitor does not elect to defend any such claim or demand, Indemnitee may do so at its option, but shall not have any obligation to do so.

9. DISCHARGE OF LIABILITIES. Seller shall timely perform and discharge all obligations and liabilities of every kind whatsoever to be discharged prior to the Close of Escrow and arising from or relating to (a) the Real Property, including, but not limited to, the use and ownership of the Real Property; and (b) the operation of the Real Property.

10. ESCROW AND CLOSING

10.1 As soon as possible after the full execution of this Agreement, Buyer and Seller shall open an escrow for the purpose of consummating the purchase and sale contemplated by this Agreement ("Escrow") by depositing an executed copy of this Agreement with Fidelity National Title Company, at 285 West Court Street, Woodland, California 95695 ("Escrow Holder"). This Agreement shall constitute escrow instructions to Escrow Holder. Seller and Buyer shall, promptly upon request by Escrow Holder, execute such additional escrow instructions as may be reasonably required by Escrow Holder, including Escrow Holder's standard printed conditions and stipulations with respect to escrows concerning the purchase and sale of real property; provided, however, that if there is any conflict between the provisions of this Agreement and the provisions of any such additional instructions, the provisions of this Agreement shall prevail. Upon delivery to Escrow of a fully executed copy of this Agreement by both parties, Escrow shall be deemed opened on the terms and conditions set forth in this Agreement.

10.2 Escrow shall close, and the Grant Deed shall be recorded in the Office of the County Recorder of County, California on or before March 27, 2009 ("Close of Escrow").

10.3 Within the time set forth below, or if none is specified, prior to the Close of Escrow, Seller shall deliver to Escrow Holder, or if so indicated, to Buyer, the following documents and items:

(a) At least one (1) day prior to the Close of Escrow, the duly executed and acknowledged Grant Deed.

(b) To Buyer, at the location of the Property, at Close of Escrow, all keys to the Real Property, adequately and properly labeled.

(c) An assignment ("Assignment"), in the form of the attached **Exhibit C**, which is incorporated herein by reference, executed by Seller, assigning to Buyer all of Seller's right, title, and interest in all plans, specifications, construction drawings, project files, architect's agreements, consulting agreements, service agreements, maintenance agreements, permits, licenses, entitlements, development rights, utility deposit refunds, and all other intangible assets relating to the Real Property.

(d) Seller's affidavit of nonforeign status as contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended ("FIRPTA Affidavit").

(e) Either California Franchise Tax Board Form 593-C or 593-W regarding the withholding of California taxes on the sale of California real estate.

10.4 Buyer shall deliver to Escrow Holder prior to the Close of Escrow funds sufficient to cover Buyer's closing costs as set forth in paragraph 10.7.2 hereinbelow.

10.5 Upon the Close of Escrow, Escrow Holder shall record the Grant Deed (marked for return to Buyer) and shall deliver the monies and documents to which each party is entitled pursuant to this Agreement when Title Company is in a position to issue its CLTA policy of title insurance subject only (i) to the Permitted Exceptions; and (ii) Title Company's standard pre-printed exceptions, with liability in the amount of the Purchase Price, showing title to the Real Property vested in Buyer ("Title Policy").

10.6 Upon the Close of Escrow, possession of the Real Property shall be delivered to Buyer subject to the Permitted Exceptions, and the following items, documents and monies shall be delivered and disbursed by Escrow Holder as set forth below:

10.6.1 To Seller and Seller's designees: the Purchase Price set forth in section 2 hereinabove, as adjusted pursuant to this Agreement and reduced by the amount of Seller's closing costs as set forth in Paragraph 10.7.1 hereinbelow, in the following proportions:

(a) 67.61% to KB Home

Att: Leo Pantoja and Stephen Tierney
KB Home
2420 Del Paso Road, Suite 200
Sacramento, CA 95234
Fax: (916) 576-5815

With copy to:
Att: Matthew Schenone
KB Home
6720 Knoll Center Parkway, Suite 200
Pleasanton, CA 94566
Fax: (925) 750-1846

KB Home Wiring Instructions:
Bank of America

NACS – Real Estate – Charlotte
101 S. Tryon Street
Charlotte, NC 28255-0001

ABA Number:	026009593
Payee:	KB Home
Account Number:	14205-51399
Reference:	KB(500)
Contact:	Jenny Tan

(b) 19.93% to Centex

Centex Homes
3700 Douglas Blvd., Suite 150
Roseville, CA 95661
Att: Eric Quinlan and John Jarecki
Fax: (916) 788-9001

With copy to:
Centex Homes
2527 Camino Ramon, Suite 250
San Ramon, CA 94583
Att: Trece Herder and David Freilicher
Fax: (925) 415-1601

Centex Wire Instructions:

Account Name:	Centex Homes Sacramento Division
Bank:	Bank of America
Account Number:	12572-55378
Routing Number:	026009593

(c) 12.46% to Seller

HTW West
P.O. Box 1008
Santa Margarita, CA 93453
Att: Bob Fowler
Fax: (805) 764-5401

10.6.2 To Buyer: the Title Policy, the Assignment and the Closing Certificate.

10.7 Upon Close of Escrow, Escrow and title charges shall be paid in the manner provided below.

10.7.1 Buyer shall pay:

(a) The cost of the Title Policy.

(b) The cost of any and all documentary transfer tax or stamps or other sales tax.

(c) All of the Escrow fees.

(d) All recording fees.

10.8 If Escrow fails to close as a result of the default in the performance of this Agreement by a party, the defaulting party shall pay all title and escrow charges; provided, however, that nothing in this section 10 shall be deemed to limit, and the provisions of this section 11 shall be in addition to, all other rights and remedies of the non-defaulting party.

10.9 Escrow Holder is authorized and instructed to debit Seller for Seller's closing costs as set forth in section 10.7.1 hereinabove.

11. PRORATIONS

11.1 Prorations shall be made as of the Close of Escrow. All prorations shall be made on the basis of a thirty (30) day month and shall be paid in cash to Seller if Seller is entitled thereto, or shall be credited against the cash portion of the Purchase Price if Buyer is entitled thereto. Such prorations shall be made by Escrow Holder on the basis of a statement(s) approved by Buyer and Seller and deposited into the Escrow prior to the Close of Escrow. The date used for prorations is hereinafter referred to as the "Proration Date."

(a) All real estate taxes and all personal property taxes due and owing as of the Proration Date, and all penalties and interest thereon, shall be paid by Seller. All installments of any bond or assessment which constitutes a lien on the Real Property at the Close of Escrow shall be paid by Seller. Current real estate taxes, special assessments and personal property taxes which are not yet due and owing shall be prorated based upon the most recent tax bill, so that the portion of current taxes allocable to the period from the beginning of such tax year through the Proration Date shall be charged to and paid by Seller and the portion of the current taxes allocable to the portion of such tax year from the Proration Date to the end of such tax year shall be charged to and paid by Buyer. Proration of taxes and assessments shall be final as of the Proration Date, regardless of the amount of taxes or assessments that actually are, or subsequently become, due.

(b) Expenses of operating the Real Property (other than insurance premiums, taxes and utility charges) which were prepaid by Seller for a period beyond the Proration Date.

11.2 Buyer shall be responsible for obtaining and paying for utility services from and after Close of Escrow.

12. DAMAGE OR DESTRUCTION PRIOR TO CLOSE OF ESCROW. If the Real Property, or any portion thereof, is damaged or destroyed prior to the Close of Escrow from any cause whatsoever, whether an insured risk or not, including but not limited to, fire, flood, accident or other casualty which, according to the Buyer's and Seller's best estimate, would cost more than Twenty Thousand and no/100 ($20,000.00) to repair, Buyer shall have the option, upon written notice to Seller, to either (i) terminate this Agreement, or (ii) purchase the Real

Property. If Buyer elects to terminate this Agreement, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate and Escrow Holder shall thereupon promptly return all documents, items and monies in its possession to the party who shall have deposited same with Escrow Holder. In the event of such termination, each party shall pay one-half (1/2) of the Escrow fees. If Buyer elects to purchase the Real Property, Buyer shall be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction and, in addition, Seller shall pay Buyer the amount of any insurance deductible (which can be paid by Seller by means of a credit against the Purchase Price). In the event that Buyer's and Seller's best estimate of the cost of repair is less than Twenty Thousand and no/100 Dollars ($20,000.00) or less, Buyer shall purchase the Property and be entitled to, and Seller shall assign to Buyer, all insurance proceeds covering such damage or destruction. In addition, the difference between the amount of insurance proceeds available and the cost of repair shall be deducted from the cash portion of the Purchase Price. Should any damage or destruction occur prior to the Close of Escrow, the date scheduled for the Close of Escrow shall be extended for a period of time not to exceed thirty (30) days, for the purpose of allowing Buyer and Seller sufficient time to estimate the cost of repair. If Buyer fails to notify Seller of its election under this section 12, Buyer shall be deemed to have elected to purchase the Real Property.

13. EMINENT DOMAIN

13.1 The words "condemnation" or "condemned" as used in this section 13 shall mean the exercise of, or intent to exercise, the power of eminent domain expressed in writing, as well as the filing of any action or proceeding for such purpose, by any person, entity, body, agency or authority having the right or power of eminent domain (the "condemning authority").

13.2 If Seller receives written notice from a condemning authority advising of a condemnation of all or any portion of the Real Property ("Condemnation Notice"), Seller shall immediately advise Buyer of same in writing and deliver therewith a copy of the Condemnation Notice. Within ten (10) days after Buyer's receipt of the Condemnation Notice, Buyer shall notify Seller of its election to either (i) terminate this Agreement and the Escrow or (ii) purchase the Real Property. If Buyer elects to terminate this Agreement, Escrow shall immediately terminate upon Seller's receipt of Buyer's notice of election to terminate this Agreement and Escrow Holder shall thereupon promptly return all documents, items and monies in its possession to the party who shall have deposited same with Escrow Holder. In the event of such termination, each party shall pay one-half (1/2) of the Escrow fees. If Buyer elects to purchase the Real Property, Seller shall transfer to Buyer at the Close of Escrow all proceeds from condemnation or Seller's right to receive all such proceeds. If Buyer fails to notify Seller of its election under this section 13, Buyer shall be deemed to have elected to purchase the Property.

14. SURVIVAL OF CLOSE OF ESCROW. All representations, warranties, covenants, conditions, 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 specifically stated otherwise in this Agreement.

15. 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 (such as Federal Express, DHL, etc.); or (iv) sent by facsimile 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 facsimile transmission, a confirming copy shall be sent to the sender, and receipt of the facsimile transmittal 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 addresses.

to Seller: HTW West
P.O. Box 1008
Santa Margarita, CA 93453
Attention: Bob Fowler
Fax: (805) 764-5401

to Buyer: Daniel W. Gentry
Parks & Recreation Director
City of Woodland
2001 East Street
Woodland, CA 95776
Facsimile No.: 530-666-7257

with a copy to:

Andrew M. Morris, Esq.
Best Best & Krieger LLP
400 Capitol Mall, Suite 1650
Sacramento, CA 95814
Facsimile No.: 916-325-4010

to Escrow Holder:

Fidelity National Title Company
285 West Court Street
Woodland, CA 95695

Attn: Kristi Adan
Escrow Officer
Facsimile No.: 530-662-2083

16. ENTIRE AGREEMENT. This Agreement, and the Exhibits attached hereto, represent the entire Agreement between the parties in connection with the transactions

contemplated hereby and the subject matter hereof, and 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 which are not expressly set forth herein. This Agreement may not be modified except by a written agreement signed by both Buyer and Seller.

17. ASSIGNMENT. Neither party shall voluntarily or by operation of law assign, hypothecate, give, transfer, mortgage, sublet, license, or otherwise transfer or encumber all or any part of such party's rights, duties, or other interests in this Agreement (collectively, Assignment), without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Any attempt to make an Assignment in violation of this provision shall be a material default under this Agreement and any Assignment in violation of this provision shall be null and void.

18. 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 permitted assigns.

19. 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. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.

20. CAPTIONS AND HEADINGS. The captions and paragraphs 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.

21. 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.

22. 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 Yolo, or if a Federal action, in the United States District Court for the Eastern District of California.

23. ATTORNEYS FEES. If either party named herein 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 attorneys' fees to be paid by the losing party as fixed by the Court (or if applicable, the arbitrator).

24. TIME OF ESSENCE. Time is of the essence with respect to all matters

contained in this Agreement.

25. DATE OF AGREEMENT. All references in this Agreement to "the date of this Agreement" or "the date hereof" shall be deemed to refer to the date set forth in the first paragraph of this Agreement.

26. INVALIDITY OF ANY PROVISION. If any provision (or any portion of any provision) of this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions (or the balance of such provision) shall not be affected thereby.

27. DRAFTING OF AGREEMENT. Buyer and Seller acknowledge that this Agreement has been negotiated at arm's length, that each party has been represented by independent counsel, and that this Agreement has been drafted by both parties and no one party shall be construed as the draftsperson.

28. NO THIRD PARTY BENEFICIARY RIGHTS. This Agreement is entered into for the sole benefit of Buyer and Seller and 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.

29. INCORPORATION OF EXHIBITS. Each and all of the Exhibits attached to this Agreement are incorporated herein as if set forth in full in this Agreement.

30. REPRESENTATION ON AUTHORITY OF PARTIES AND SIGNATORIES. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

31. BROKERS. Each party warrants and represents to the other that no brokers have been retained or consulted in connection with this transaction. Each party agrees to defend, indemnify, and hold harmless the other party from any claims, expenses, costs, or liabilities arising in connection with a breach of that party's representations, warranties, or covenants under this Agreement.

32. RATIFICATION. This Agreement is subject to review, approval and ratification by the City Council of the City of Woodland and shall have no force or effect unless so approved and ratified.

33. OFFER AND ACCEPTANCE. This Agreement as executed by Buyer constitutes an offer to purchase the Real Property on the terms and conditions contained in this Agreement. If Seller fails to execute a copy of this Agreement and return it to Buyer by 5:00 p.m., February 26, 2009, this Agreement shall be void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

HTW WEST VENTURES, LLC
a Delaware limited liability company

By Hertel Development Partners, LLC
a California limited liability company

By: _____
Ronald W. Hertel, Member

By: _____
Robert J.S. Fowler, Member

CITY OF WOODLAND,
a California municipal corporation

By _____
Mark G. Deven
City Manager

"Buyer"

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF WOODLAND, COUNTY OF YOLO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lot M as shown on the map entitled "Subdivision No. 4821, Turn of the Century Large Lot Subdivision", filed on January 31, 2006 in Book 2006 of Maps, Page No. 18-20.

Excepting all interest in and to all minerals, mineral deposits and natural resources, including all oil, gas and other hydrocarbon substances in and under said land below a depth of five hundred (500) feet, without right of surface entry or entry into five hundred (500) feet below the surface of the land, and all of the rights of ownership thereto, as reserved in the deed recorded January 7, 2004 as Document No. 2004-0000650.

APN: 042-010-082-1

CLOSING CERTIFICATE

The undersigned Seller ("Seller") hereby confirms that all representations and warranties made by Seller in the Agreement of Purchase and Sale and Joint Escrow Instructions dated as of February 24, 2009 ("Agreement"), including but not limited to all representations and warranties contained in section 6 of the Agreement, continue to be true as of the Close of Escrow for the sale and purchase of the Real Property described in the Agreement.

Dated: _____, 2009

HTW WEST VENTURES, LLC
a Delaware limited liability company

By Hertel Development Partners, LLC
a California limited liability company

By: _____
Ronald W. Hertel, Member

By: _____
Robert J.S. Fowler, Member

EXHIBIT B

ASSIGNMENT

For valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned seller ("Seller") hereby assigns, transfers and conveys to the City of Woodland, a California municipal corporation ("Buyer"), all of Seller's right, title, and interest in all plans, specifications, construction drawings, project files, architect's agreements, consulting agreements, service agreements, maintenance agreements, permits, licenses, entitlements, development rights, utility deposit refunds, and all other intangible assets relating to the Real Property described in the Agreement of Purchase and Sale and Joint Escrow Instructions made as of February 24, 2009 between Seller and Buyer.

Dated: _____, 2009

HTW WEST VENTURES, LLC
a Delaware limited liability company

By Hertel Development Partners, LLC
a California limited liability company

By: _____
Ronald W. Hertel, Member

By: _____
Robert J.S. Fowler, Member

EXHIBIT C