



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Consider Approval of Insubstantial Amendments to the Assignment and Assumption Agreement, attached as Exhibit G to the Development Agreement By and Between the City of Lodi and San Joaquin Valley Land Company ("SJVLC"), and Thereby Consent to the Assignment of the Costco Site from SJVLC to Costco

MEETING DATE: August 4, 2010

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Approve the insubstantial amendments to the Assignment and Assumption Agreement, attached as Exhibit G to the Development Agreement by and between the City of Lodi and San Joaquin Valley Land Company ("SJVLC"), and thereby consent to the assignment of the Costco site from SJVLC to Costco.

BACKGROUND INFORMATION: Council approved a Development Agreement with SJVLC effective September 6, 2006. The Agreement contemplates the assignment of its obligations and benefits in Paragraph 22 in a form attached as Exhibit G, entitled "Assignment and Assumption Agreement." SJVLC and Costco have agreed on a form of Assignment Agreement that differs, although insubstantially, from the form attached as Exhibit G. The changes relate primarily to the fact that Costco will not assume any of SJVLC's obligations, instead leaving them with SJVLC. As proposed, SJVLC alone would retain the obligations of the Development Agreement. The Agreement also adds indemnity obligations between SJVLC and Costco and a California Choice of Law provision. However the assignment could complicate enforcement of the Development Agreement's requirements because the benefited party and obligated party are now separate. Paragraph 12.3 permits insubstantial amendments to the Development Agreement with Council Consent.

The agreement is in the final negotiations stage and a red-lined version will be provided to Council on blue sheet prior to the meeting.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

A handwritten signature in black ink, appearing to read "D. Stephen Schwabauer".

D. Stephen Schwabauer
City Attorney

APPROVED: _____

Konradt Bartlam, Interim City Manager

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

OFFICIAL BUSINESS

Document entitled to free recording
Government Code Section 6103

This document is being signed in counterpart
and is considered as one original

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT ("Agreement") is entered into as of _____, 2010 ("Effective Date"), by and among SAN JOAQUIN VALLEY LAND COMPANY, LLC, a California limited liability company, and SKINNER RANCH HOLDINGS, L.P., a California limited partnership (collectively, "Developer"), COSTCO WHOLESALE CORPORATION, a Washington corporation ("Assignee") and the CITY OF LODI ("City").

RECITALS

1. On September 6, 2006, City and Developer entered into that certain agreement entitled "Development Agreement By and Between The City of Lodi and San Joaquin Valley Land Company, LLC" relative to the development known as the "Reynolds Ranch" project ("Development Agreement"). Pursuant to the Development Agreement, Developer agreed to develop certain property more particularly described on Exhibit A attached to the Development Agreement ("Subject Property"), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of San Joaquin County on December 26, 2006, as Instrument No. 2006-268372.

2. Concurrently herewith, Assignee is purchasing from Developer an approximate 15.056 acre portion of the Subject Property located at the southeast corner of Hamey Lane and Reynolds Ranch Parkway and more particularly described on Exhibit A attached hereto ("Assigned Parcel").

3. Developer desires to assign and Assignee desires to assume certain of Developer's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel, as more particularly set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Developer and Assignee agree as follows:

1. Assignment of Development Agreement. Except as set forth in Section 3 below, Developer hereby assigns, effective as of the Effective Date, all of the rights, title, interest, burdens and obligations (collectively, "Rights and Obligations") of Developer under the Development Agreement with respect to the Assigned Parcel. Except as expressly assigned to Assignee hereby or to other parties by other instruments (including without limitation that certain Assignment and Assumption of Development Agreement and Grant of Easement by and between Developer, the City and California Physicians' Service dba Blue Shield of California recorded on June 26, 2007 as Instrument Number 2007-117829 in the Official Records of **San** Joaquin County, and that certain Assignment and Assumption of Development Agreement by and between Developer, the City and Home Depot U.S.A., Inc. recorded concurrently herewith (collectively, the "Other Assignments")), Developer retains all the Rights and Obligations under the Development Agreement with respect to all other property within the Subject Property to the extent owned by Developer or to the extent the Rights or Obligations were not assigned to or assumed by Developer's transferee.

2. Assumption of Development Agreement. Except as set forth in Section 3 below, Assignee hereby assumes, effective as of the Effective Date, all of the Rights and Obligations of Developer under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Developer under the Development Agreement assumed by Assignee hereunder with respect to the Assigned Parcel. The parties intend hereby that, as of the Effective Date, Assignee shall become substituted as the "Developer" under the Development Agreement with respect to the assigned and assumed Rights and Obligations for the Assigned Parcel.

3. Obligations Retained by Developer. Notwithstanding the provisions of Sections 1 and 2 above, Developer is not assigning and Assignee is not assuming the following Rights and Obligations of Developer with respect to the Assigned Parcel pursuant to the below-referenced provisions of the Development Agreement and, as between Developer and Assignee, Developer shall retain 100% of such Rights and Obligations under the Development Agreement (collectively, the "Retained Obligations"):

- (a) 6.1.1 Payment of a development fee for a proportionate share of the cost of the Highway 99 overpass at Harney Lane.
- (b) 6.1.2 Payment of Agricultural Land Mitigation fee, as identified in Mitigation Measure 3.7.2, pursuant to the ordinance and/or City resolution.

- (c) 6.1.3 Payment of Electric Capital Improvement Mitigation fee (see Section 6.4.10) pursuant to the ordinance and/or City resolution.
- (d) 6.4.1 Dedications and Improvements of Parks.
- (e) 6.4.2 Rehabilitation of Fifty Existing Residential Units.
- (f) 6.4.3 Downtown Impact Fee.
- (g) 6.4.4 Utility Exit Fees.
- (h) 6.4.5 Maintenance of Specified Public Improvements.
- (i) 6.4.6 Fire Station Land Dedication and Payment of Construction and Equipment Costs
- (j) ~~(i)~~ 6.4.8 Public Art on Property (and the art shall be placed elsewhere in the Subject Property than on the Assigned Parcel).
- (k) ~~(j)~~ 6.4.9 Animal Shelter.
- (l) ~~(k)~~ 6.4.10 Utility Line Extension.
- (m) ~~(l)~~ 6.4.11 Implementation of Obligations Arising from Settlement Agreement among San Joaquin Valley Land Company LLC, Citizens for Open Government and the City of Lodi (Exhibit I to the Development Agreement).
- (n) ~~(m)~~ 6.5 Annexation.
- (o) ~~(n)~~ 8.2 Existing Fees, Exactions and Dedications (except to the extent imposed as conditions of the Liquor Conditional Use Permit, building permit, utility connection fees and business operational licenses specific to the use of the Assigned Parcel).
- (p) ~~(o)~~ 8.3 New Development Impact Fees, Exactions and Dedications (except to the extent imposed as conditions of the Liquor Conditional Use Permit, building permit, utility connection fees and business operational licenses specific to the use of the Assigned Parcel).
- (q) ~~(p)~~ 9 Community Facilities District.

(r) (q) All Rights and Obligations with respect to any of the Subject Property other than the Assigned Parcel and as otherwise assigned and/or assumed of record by other assignees (including, without limitation, those Rights and Obligations assigned and assumed pursuant to the Other Assignments) upon conveyance of other parcels of the Subject Property.

4. Indemnification.

4.1 Developer Indemnity. Except to the extent assumed by Assignee hereunder. Developer agrees to indemnify, defend (with counsel reasonably acceptable to Assignee) and hold Assignee, its officers, directors, members, partners, employees, agents, representatives, successors and assigns harmless from and against any costs (including, without limitation, reasonable attorneys' fees and costs), claims, damages or causes of action arising out of or resulting (a) from the failure of Developer or any entity controlled by, controlling or under common control with Developer to comply with or perform the covenants, conditions, agreements, duties and obligations of Developer under the Development Agreement ~~with respect to the Assigned Parcel to the extent arising prior to the Effective Date and which have not been assigned to other parties by other instruments (including, without limitation, those covenants, conditions, agreements, duties and obligations assigned pursuant to the Other Assignments); or,~~ in connection with any claims for indemnification by the City under Section 25 of the Development Agreement ~~with respect to the Assigned Parcel and arising prior to the Effective Date and not assigned to other parties by other instruments (including, without limitation, those covenants, conditions, agreements, duties and obligations assigned pursuant to the Other Assignments); or with respect to the Retained Obligations and arising at any time and not assigned to other parties by other instruments (including, without limitation, those covenants, conditions, agreements, duties and obligations assigned pursuant to the Other Assignments).~~ In addition, Developer agrees to indemnify, defend (with counsel reasonably acceptable to Assignee) and hold Assignee, its officers, directors, members, partners, employees, agents, representatives, successors and assigns harmless from and against any costs (including, without limitation, reasonable attorneys' fees and costs), claims, damages or causes of action arising out of or resulting from the failure of Developer to comply with or perform the covenants, conditions, agreements, duties and obligations of Developer under the Development Agreement ~~except with respect to the Assigned Parcel on and after the Effective Date and except to the extent assigned to other parties by other instruments (including, without limitation, those covenants, conditions, agreements, duties and obligations assigned pursuant to the Other Assignments), or in connection with any claims for indemnification by the City under Section 25 of the Development Agreement with respect to the Retained Obligations arising at any time (except to the extent assigned to other parties by other instruments, including, without limitation, those covenants, conditions, agreements, duties and obligations assigned pursuant to the Other Assignments) and all of the Subject Property arising at any time, except with respect to the Assigned Parcel on and after the Effective Date and except to the extent assigned to other parties by other instruments (including, without limitation, those covenants, conditions, agreements, duties and obligations assigned pursuant to the Other Assignments),~~ or (c) with respect to the Retained Obligations and arising at any time.

4.2 Assignee Indemnity. Assignee agrees to indemnify, defend (with counsel reasonably acceptable to Developer) and hold Developer, its officers, directors, members, partners, employees, agents, representatives, successors and assigns harmless from and against any costs (including, without limitation, reasonable attorneys' fees and costs), claims, damages or causes of action arising out of or resulting from the failure of Assignee to comply with or perform the covenants, conditions, agreements, duties and obligations under the Development Agreement assumed by Assignee pursuant hereto or in connection with any claims for indemnification by the City under Section 25 of the Development Agreement, to the extent the same are with respect to the Assigned Parcel, arise on and after the Effective Date, and are not among the Retained Obligations.

5. Consent of City to Assignment and Assumption. The City hereby consents to the assignment to and assumption by Assignee of the Development Agreement upon the terms set forth in this Agreement, including, without limitation and notwithstanding that the provisions of the Development Agreement may run with the land pursuant to Section 23 of the Development Agreement and Assignee's title to the Assigned Parcel may be subject thereto, Assignee does not assume and will not be responsible for the Retained Obligations, Developer is not released therefrom but shall continue, pursuant to Paragraph 22 of the Development Agreement to be responsible for the Retained Obligations with respect to the Assigned Parcel, and City shall not look to Assignee or the Assigned Parcel for performance and observance of the Retained Obligations or Rights and Obligations assigned to and/or assumed by transferees of other parcels of the Subject Property.

6. Notices. The notice address described in Section 29 of the Development Agreement for the Developer and Assignee shall be:

To Developer: San Joaquin Valley Land Company
1420 S. Mills Avenue, Suite M
Lodi, CA 95242
Attention: Dale Gillespie and ~~Pat~~ Robertson

With a copy to: Cox Castle & Nicholson
2049 Century Park E 28th Fl
Los Angeles, CA 90067
Attention: Gary Glick

To Costco: Costco Wholesale Corporation
999 Lake Drive
Issaquah, WA 98027
Attention: Property Management

With a copy to: Luce Forward Hamilton & Scripps LLP
121 Spear Street, Suite 200
San Francisco, CA 94105
Attention: Counsel for Costco Wholesale

7. Representations.

7.1 Status. Assignee is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington, and duly qualified to do business in the State of California. Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California.

7.2 Authority. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of each of the parties hereto. Developer and Assignee each represent and warrant that the person signing this Agreement on behalf of such party has full power and authority to execute this Agreement on such party's behalf.

8. Miscellaneous.

8.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.2 Successor and Assigns. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

8.3 Attorneys' Fees. If any party hereto brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing party in such action shall be entitled to recover from the non-prevailing party all costs and expenses of litigation, including reasonable attorneys' fees.

8.4 Incorporation of Exhibits. Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

8.5 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

[Signatures on following page]

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER

SAN JOAQUIN VALLEY LAND
COMPANY, LLC
a California limited liability company

By: _____
Name: _____
Title: _____

SKINNER RANCH HOLDINGS, L.P.
a California registered limited partnership
By: Morse Skinner Properties, LLC
a California limited liability
company
Its General Partner

By: _____
Name: _____
Title: _____

ASSIGNEE

COSTCO WHOLESALE CORPORATION,
a Washington corporation

By: _____
Name: _____
Title: _____

CITY

CITY OF LODI

By: _____
Name: _____
Title: City Manager

Dated: _____, 2010

Form of Agreement hereby approved:

By: _____
Name: _____
Title: City Attorney

Dated: _____, 2010

[ATTACH ACKNOWLEDGEMENTS]

EXHIBIT A

LEGAL DESCRIPTION OF ASSIGNED PARCEL

Parcel 1 of Parcel Map No. _____ in the City of Lodi, County of San Joaquin, State of California, as per Map filed in Book _____, Pages _____ of Parcel Maps, in the Office of the County Recorder of said County.

APN: Portions of 058-130-090, 058-130-100, 058-130-110, 058-130-160, 058-130-170, and 058-130-180.

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301179893.2

Document comparison done by Workshare DeltaView on Thursday, July 29, 2010
 1:56:20 PM

Input:	
Document 1	interwovenSite://SSFDMS/SF/301179893/1
Document 2	interwovenSite://_SSDENTERPRISE/SF/301179893/2
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Legend:	
<u>Insertion</u>	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:		
	Count	
Insertions	10	
Deletions	12	
Moved from	0	
Moved to	0	
Style change	0	
Format changed	0	
Total changes	22	

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

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Document entitled to fkee recording
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This document is being signed in counterpart
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RECITALS

1. On September 6, 2006, City and Developer entered into that certain agreement entitled “Development Agreement By and Between The City of Lodi and San Joaquin Valley Land Company, LLC” relative to the development known as the “Reynolds Ranch” project (“Development Agreement”). Pursuant to the Development Agreement, Developer agreed to develop certain property more particularly described on Exhibit A attached to the Development Agreement (“Subject Property”), subject to certain conditions and obligations as set forth in the Development Agreement. The Development Agreement was recorded against the Subject Property in the Official Records of San Joaquin County on December 26, 2006, as Instrument No. 2006-268372.

2. Concurrently herewith, Assignee is purchasing fkom Developer an approximate 15.056 acre portion of the Subject Property located at the southeast corner of Harney Lane and Reynolds Ranch Parkway and more particularly described on Exhibit A attached hereto (“Assigned Parcel”).

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- (n) 6.5 Annexation.
- (o) 8.2 Existing Fees, Exactions and Dedications (except to the extent imposed as conditions of the Liquor Conditional Use Permit, building permit, utility connection fees and business operational licenses specific to the use of the Assigned Parcel).
- (p) 8.3 New Development Impact Fees, Exactions and Dedications (except to the extent imposed as conditions of the Liquor Conditional Use Permit, building permit, utility connection fees and business operational licenses specific to the use of the Assigned Parcel).
- (q) 9 Community Facilities District.

- (r) All Rights and Obligations with respect to any of the Subject Property other than the Assigned Parcel and as otherwise assigned and/or assumed of record by other assignees (including, without limitation, those Rights and Obligations assigned and assumed pursuant to the Other Assignments) upon conveyance of other parcels of the Subject Property.

4. Indemnification.

4.1 Developer Indemnity. Except to the extent assumed by Assignee hereunder, Developer agrees to indemnify, defend (with counsel reasonably acceptable to Assignee) and hold Assignee, its officers, directors, members, partners, employees, agents, representatives, successors and assigns harmless from and against any costs (including, without limitation, reasonable attorneys' fees and costs), claims, damages or causes of action arising out of or resulting (a) from the failure of Developer or any entity controlled by, controlling or under common control with Developer to comply with or perform the covenants, conditions, agreements, duties and obligations of Developer under the Development Agreement, (b) in connection with any claims for indemnification by the City under Section 25 of the Development Agreement, or (c) with respect to the Retained Obligations and arising at any time.

4.2 Assignee Indemnity. Assignee agrees to indemnify, defend (with counsel reasonably acceptable to Developer) and hold Developer, its officers, directors, members, partners, employees, agents, representatives, successors and assigns harmless from and against any costs (including, without limitation, reasonable attorneys' fees and costs), claims, damages or causes of action arising out of or resulting from the failure of Assignee to comply with or perform the covenants, conditions, agreements, duties and obligations under the Development Agreement assumed by Assignee pursuant hereto or in connection with any claims for indemnification by the City under Section 25 of the Development Agreement, to the extent the same are with respect to the Assigned Parcel, arise on and after the Effective Date, and are not among the Retained Obligations.

5. Consent of City to Assignment and Assumption. The City hereby consents to the assignment to and assumption by Assignee of the Development Agreement upon the terms set forth in this Agreement, including, without limitation and notwithstanding that the provisions of the Development Agreement may run with the land pursuant to Section 23 of the Development Agreement and Assignee's title to the Assigned Parcel may be subject thereto, Assignee does not assume and will not be responsible for the Retained Obligations, Developer is not released therefrom but shall continue, pursuant to Paragraph 22 of the Development Agreement to be responsible for the Retained Obligations with respect to the Assigned Parcel, and City shall not look to Assignee or the Assigned Parcel for performance and observance of the Retained Obligations or Rights and Obligations assigned to and/or assumed by transferees of other parcels of the Subject Property.

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1420 S. Mills Avenue, Suite M
Lodi, CA 95242
Attention: Dale Gillespie and Bart Robertson

With a copy to: Cox Castle & Nicholson
2049 Century Park E 28th Fl
Los Angeles, CA 90067
Attention: Gary Glick

To Costco: Costco Wholesale Corporation
999 Lake Drive
Issaquah, WA 98027
Attention: Property Management

With a copy to: Luce Forward Hamilton & Scripps LLP
121 Spear Street, Suite 200
San Francisco, CA 94105
Attention: Counsel for Costco Wholesale

7. Representations.

7.1 Status. Assignee is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington, and duly qualified to do business in the State of California, Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California.

7.2 Authority. This Agreement is duly authorized, executed and delivered and shall be the legal, valid and binding obligation of each of the parties hereto. Developer and Assignee each represent and warrant that the person signing this Agreement on behalf of such party has full power and authority to execute this Agreement on such party's behalf.

8. Miscellaneous.

8.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.2 Successor and Assigns. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

8.3 Attorneys' Fees. If any party hereto brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing party in such action shall be entitled to recover from the non-prevailing party all costs and expenses of litigation, including reasonable attorneys' fees.

8.4 Incorporation of Exhibits. Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

8.5 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed ~~an~~ original and all of which when taken together shall constitute one instrument.

[Signatures on following page]

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER

SANJOAQUIN VALLEY LAND
COMPANY, LLC
a California limited liability company

By: _____
Name: _____
Title: _____

SKINNER RANCH HOLDINGS, L.P.
a California registered limited partnership
By: Morse Skinner Properties, LLC
a California limited liability
company
Its General Partner

By: _____
Name: _____
Title: _____

ASSIGNEE

COSTCO WHOLESALE CORPORATION,
a Washington corporation

By: _____
Name: _____
Title: _____

CITY

CITY OF LODI

Form of Agreement hereby approved:

By: _____
Name: _____
Title: City Manager

By: _____
Name: _____
Title: City Attorney

Dated: _____, 2010

Dated: _____, 2010

[ATTACH ACKNOWLEDGEMENTS]

EXHIBIT A

LEGAL DESCRIPTION OF ASSIGNED PARCEL

Parcel 1 of Parcel Map No. _____ in the City of Lodi, County of San Joaquin, State of California, as per Map filed in Book _____, Pages _____ of Parcel Maps, in the Office of the County Recorder of said County.

APN: Portions of 058-130-090, 058-130-100, 058-130-110, 058-130-160, 058-130-170, and 058-130-180.

301179893.2