



# CITY OF STOCKTON

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## **ECONOMIC DEVELOPMENT DEPARTMENT**

**Housing, Economic Development, Asset Management and Central Parking**

City Hall • 425 North El Dorado Street, Suite 317 • Stockton, CA 95202-1997 • 209 / 937-8539 • Fax 209 / 937-5099  
www.stocktongov.com

October 1, 2015

Ten Space  
Attention Zac Cort  
115 North Sutter Street, #307  
Stockton, CA 95202

### **615/617 EAST CHANNEL STREET**

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Thank you for your interest in the City's Lien Forgiveness Incentive Program. The City has received your application for the property at 615/617 East Channel Street. The Lien Forgiveness Incentive Program is designed to alleviate the burden of code enforcement liens from certain properties and allow their successful development, including blight abatement.

The program allows for the forgiveness of excessive fines, penalties, interest, and/or liens of for eligible properties. After an initial review of the application submitted for 615/617 East Channel Street, the property appears to be eligible for the program and will be processed for further review and determination by the City Manager. As of September 24, 2015, the property has incurred \$21,030.24 in fees. Of that amount, and pending review of the application by the city, the project may be eligible for relief of up to \$7,000. We anticipate an approval date of October 15th.

If you have any questions, please contact me at (209) 937-8810.

MICAH RUNNER, DIRECTOR  
ECONOMIC DEVELOPMENT DEPARTMENT

MR:slw



# CITY OF STOCKTON

## ECONOMIC DEVELOPMENT DEPARTMENT

Housing, Economic Development, Asset Management, and Parking Authority

400 E. Main Street, 4<sup>th</sup> Floor • Stockton, CA 95202-3000 • 209 / 937-8539 • Fax 209 / 937-5099

[www.stocktonca.gov](http://www.stocktonca.gov)

May 9, 2017

Leslie Duchene  
Senior Vice President, Chief FHA Underwriter  
Debt & Structured Finance, Multifamily & Healthcare  
CBRE, Capital Markets  
1225 17<sup>th</sup> Street, Suite 3200  
Denver, CO 80202

### **LETTER OF SUPPORT – OPEN WINDOW PROJECT**

This letter is to express support from the City of Stockton for the Open Window Project, Phase 1 in downtown Stockton as a candidate for the HUD section 220 mortgage insurance program.

The project is located in an area of significance as identified in the Stockton General Plan, as well as the City's Economic Development Strategic Plan, both of which emphasize the need for urban renewal in the downtown Stockton community. Moreover, Open Window Project, Phase 1 aligns with several city plans and goals including the 2011 Urban Land Institute Report, the 2007 Greater Downtown Stockton Housing Strategy, and the City's 2014 Climate Action Plan.

This Concentrated Development Area is also within the broader Open Window Project Master Development Plan (MDP) which spans nearly 12 acres in the core of downtown Stockton between Miner, Sutter, Main, and Aurora Streets. This MDP was created in collaboration with the developer as part of a public-private partnership and was approved unanimously by the Stockton City Council in February 2016. The MDP includes full entitlements, environmental clearances, and amended zoning to accommodate the project's development scope, as well as other downtown Stockton revitalization initiatives.

The scale and design of the Open Window Project, Phase 1 will be a catalyst for urban renewal and further public private partnerships in a blighted neighborhood currently comprised of parking lots and vacant buildings. Investment in market-rate housing has not occurred in the area since the 1970s, and we believe the Open Window Project, Phase 1 will drive similar investment, and as such the City is in full support of this project.

MICAH RUNNER, DIRECTOR  
ECONOMIC DEVELOPMENT DEPARTMENT

MR:JM:slw

ORDINANCE NO. **2022-01-11-1602**

**AN ORDINANCE APPROVING TERMINATION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND OPEN WINDOW PROJECT LLC, FOR THE OPEN WINDOW PROJECT**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

**SECTION 1. BACKGROUND AND INTENT**

On February 23, 2016, the City Council approved the Open Window project, which proposed mixed-use development for revitalization and redevelopment of 11.88 acres and is comprised of 51 properties within an approximately 15 square block area of Downtown Stockton. As of 2021, only 34-units have been constructed within the Project boundary; and

On October 18, 2021, the Applicant, Zac Cort with Open Window, LLC., requested that the City of Stockton revoke an existing Master Development Plan and Terminate the Development Agreement (DA) for Open Window Project. The Applicant has verbally stated there is no benefit to either the DA or MDP for attracting development of the Project site. After consideration of the request, staff agrees that there is little benefit in the agreement and MDP beyond what is already required per local standards voted 6-0 (Commissioner Garcia Absent), recommending the City Council mutually terminate the Open Window Project DA and MDP; and

On January 11, 2022, the City Council conducted a public hearing on the application, in compliance with SMC Section 16.108.030 (A) (3), at which point all persons wishing to be heard were provided such opportunity; now, therefore,

**SECTION II. DEVELOPMENT AGREEMENT**

The City Council hereby approves the termination of the Development Agreement requested by Open Window Project LLC (as described in Exhibit 1), based on the above

Pursuant to Stockton Municipal Code Section 16.128.120 (C) and Government Code section 65868, the City Council of the City of Stockton conducted a public hearing on January 11, 2022, and hereby terminates this Development Agreement, a copy of which is attached hereto as Exhibit 1, and incorporated by reference.

**SECTION III. SEVERABILITY**

If any part of this Ordinance is held invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.

**SECTION IV. EFFECTIVE DATE**

This Ordinance shall take effect and be in full force thirty (30) days after its passage.

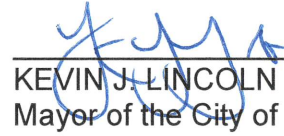
ADOPTED: JANUARY 11, 2022

EFFECTIVE: FEBRUARY 10, 2022

ATTEST:



ELIZA R. GARZA, CMG  
City Clerk of The City of Stockton

  
\_\_\_\_\_  
KEVIN J. LINCOLN II  
Mayor of the City of Stockton

Doc #: 2016-084447  
7/20/16 3:55 PM

Steve J. Bestolarides  
San Joaquin County Recorders

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202  
Attention: City Clerk

Exempt from Recording Fees  
Per Government Code Sections 6103 & 27383

Space above this line for Recorder's use only.

**DEVELOPMENT AGREEMENT**

by and between the

**CITY OF STOCKTON,**  
a California municipal corporation

and

**OPEN WINDOW PROJECT, LLC,**  
a California limited liability company

Dated: March 25, 2016

2016-02-23-1601-01 P

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## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) dated for reference purposes as of March 25, 2016 (“**Agreement Date**”), is entered into by and between OPEN WINDOW PROJECT, LLC, a California limited liability company (“**Developer**”) and the CITY OF STOCKTON, a California municipal corporation (“**City**”). Developer and City are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties.**”

### RECITALS

The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 1.1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 *et seq.* of the Government Code (“**Development Agreement Statute**”) which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City has adopted a development agreement ordinance codified as Chapter 16.128 of the City’s Municipal Code (“**Development Agreement Ordinance**”). The provisions of the Development Agreement Statute and the City’s Development Agreement Ordinance are collectively referred to herein as the “**Development Agreement Law.**” This Agreement has been drafted and processed pursuant to the Development Agreement Law.

C. Developer holds a legal or equitable interest in approximately 43 parcels comprising approximately 9.464 acres of land located in the City of Stockton, County of San Joaquin, in the downtown area bounded by East Miner Street to the north, Aurora Street to the east, East Main Street to the south, and North Sutter Street to the west. These parcels (“**Developer Parcels**”) are depicted in Exhibit A-1 and more fully described in Exhibit A-2.

D. On or about March 24, 2015, the City, the Parking Authority of the City of Stockton (“**Parking Authority**”) and Developer, entered into an Exclusive Negotiating Rights Agreement (“**ENRA**”) with respect to Developer’s proposed acquisition of certain downtown parcels owned by City for incorporation into the development project that is the subject of this Agreement.

E. As contemplated by the ENRA, concurrently with the approval of this Agreement, City and the Parking Authority have approved the execution of a Purchase Option and Development Agreement (“**City Option Agreement**”) pursuant to which Developer has the right to acquire five (5) City-owned parcels and three (3) Parking Authority-owned parcels collectively comprising approximately 2.42 acres of land and located within this same general area which are depicted in Exhibit A-1 and more particularly described in Exhibit A-3 (“**City**

**Parcels**”). The Developer Parcels and the City Parcels comprise approximately 11.884 acres of land and are collectively referred to herein as the **“Property.”**

F. Concurrently with the approval of this Agreement, City has approved a Master Development Plan for the Property (**“Master Development Plan”**) which sets forth the proposed development program, design guidelines, key development requirements and parameters for the Project (defined below), including without limitation setback requirements, permissible dwelling units per acre (DUA) and floor area ratio (FAR) ranges; development application review and approval provisions, and requirements for street trees, parking, sidewalks, public plazas and other amenities.

G. The Master Development Plan proposes a mixed-use development concept with up to 1,034 residential units, primarily built at higher densities as part of apartments or other multi-family unit developments, together with up to 200,000 square feet of retail space, up to 90,000 square feet of commercial space and up to 110,000 square feet of industrial/art studio space (collectively, the **“Project”**). The Master Development Plan may include residential development exceeding the 87 dwelling units on a parcel by parcel with an average density not exceeding 87 dwelling units per acre on any one block, consistent with current General Plan land use policies for density bonuses and consistent with other applicable general plan policies. However, the City is currently working on a General Plan update which is expected to address increased residential density in the downtown area. Therefore, for the purposes of the Project Initial Study, the analysis assumes that up to 1,400 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments.

H. This Agreement sets forth, among other things, the applicable fees, policies and zoning requirements that apply to development of the Project, and provides Developer with a vested right to develop the Project on the Property consistent with the Master Development Plan, the City’s General Plan, and the land use designations and zoning applicable to the Property, each as in effect as of the Effective Date.

I. The Project relies on the following analysis under the California Environmental Quality Act (**“CEQA”**) (set forth in Public Resources Code, section 21000 *et seq.*): a Mitigated Negative Declaration for the Master Development Plan adopted by the City Council on February 23, 2016 by Resolution No. 2016-02-23-1601-01 (**“Mitigated Negative Declaration”**) and corresponding Mitigation Monitoring and Reporting Plan. As part of the environmental review of the Project, the City, pursuant to SB 610 (codified at California Public Resources Code section 21151.9 and Water Code sections 10631 *et seq.*), requested and received from California Water Service Company a prepared by Yarne & Associates, Inc. (**“Water Supply Assessment”**), which Water Supply Assessment demonstrates that there will be adequate water supplies to meet the demands of the proposed Project, and the existing and other planned development within the City.

J. Prior to or concurrently with approval of this Agreement, the City has taken numerous actions in connection with the development of the Project on the Property, including adoption of the Master Development Plan by Resolution No. 2016-02-23-1601-01. The approvals described in Recital I and this Recital J, together with this Agreement, are collectively referred to herein as the **“Existing Approvals.”**

K. City has determined that by entering into this Agreement, City will further the purposes set forth in the Development Agreement Ordinance, and City will benefit from the increased range of housing options, retail establishments, employment opportunities, and renovation of abandoned and underdeveloped property, and publicly accessible civic and recreational space created by the Project for residents of City.

L. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Existing Approvals and Subsequent Project Approvals, thereby encouraging planning for, investment in, and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial employment, tax, and other public benefits to the City, contribute to the revitalization of downtown Stockton, and provide expanded housing, employment, retail and recreational opportunities for Stockton residents, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

M. The terms and conditions of this Agreement have undergone review by City staff, the Planning Commission and the City Council at publicly noticed meetings, and have been found to be fair, just and reasonable, in conformance with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan, and consistent with the requirement under Government Code Section 65867.5, and further, the City Council finds that the economic interests of City's citizens and the public health, safety and welfare will be best served by entering into this Agreement.

N. On January 14, 2016, the Planning Commission, the initial hearing body for purposes of development agreement review, recommended approval of this Agreement to the City Council. On February 23, 2016, the City Council adopted Ordinance No. 2016-02-23-1601 approving this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

## AGREEMENT

### ARTICLE 1 DEFINITIONS

#### Section 1.1 Definitions.

“**Additional Benefitted Properties**” is defined in Section 5.4D.

“**Administrative Amendment**” is defined in Section 9.6.

“**Agreement**” means this Development Agreement.

“**Agreement Date**” means the reference date identified in the preamble to this Agreement.

“**Annual Review**” is defined in Section 7.1BA.

“**Annual Review Form**” is defined in Section 7.1B.

“**Applicable City Regulations**” means (a) the permitted uses of the Property, the maximum density and/or total number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and other terms and conditions of development applicable to the Property as set forth in the General Plan on the Effective Date, the Master Development Plan on the Effective Date, the Municipal Code of the City on the Effective Date, and the other ordinances, policies, rules, regulations, standards and specifications of the City in effect on the Effective Date; (b) New City Laws that apply to the Property as set forth in Section 4.1, Section 4.3C or Section 4.3D herein; and (c) regulations that apply to the Property as set forth in Section 4.3A and 4.3B herein.

“**Applicable Law**” means (a) all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time, and (b) the **Applicable City Regulations**.

“**CEQA**” is defined in Recital I.

“**Changes in the Law**” is defined in Section 4.8.

“**City**” means the City of Stockton, a California municipal corporation.

“**City Option Agreement**” is defined in Recital E.

“**City Parcels**” is defined in Recital E.

“**City Parties**” means City and its elected and appointed officials, officers, agents, employees, contractors and representatives.

“**City Council**” means the City Council of the City of Stockton.

“**Connection Fees**” means those fees charged by City or by a utility provider to utility users as a cost for connecting to water, sanitary sewer and other applicable utilities.

“**Default**” is defined in Section 12.1.

“**Developer**” means Open Window Project, LLC, a California limited liability company, and its permitted assignees and successors-in-interest under this Agreement.

“**Developer Affiliate**” means an entity which controls, is controlled by, or under common control with Developer.

“**Developer Parcels**” is defined in Recital C.

“**Development Agreement Law**” is defined in Recital B.

“**Development Agreement Ordinance**” is defined in Recital B.

“**Development Agreement Statute**” is defined in Recital A.

“**Downtown Financial Incentive Program**” means the program established by City Council Resolution No. 99-0583 for the rehabilitation and reuse of vacant buildings adopted on December 14, 1999. A copy of the Downtown Financial Incentive Program is attached hereto as Exhibit H.

“**Effective Date**” is defined in Section 3.1.

“**Eligible Public Facilities**” is defined in Section 5.2C.

“**ENR Index**” means the Construction Cost Index for San Francisco, as published from time to time by the Engineering News Record.

“**ENRA**” is defined in Recital D.

“**Exactions**” means exactions imposed by City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land, and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

“**Existing Approvals**” is defined in Recital J.

“**Extension Condition**” is defined in Section 3.2A(3).

“**Extension Request**” is defined in Section 3.2A(3).

“**Force Majeure Delay**” is defined in Section 3.2D.

“**General Plan**” means the General Plan of the City of Stockton in effect as of the Effective Date.

“**Home Price Index**” is defined in Section 3.2D.

“**Impact Fee Resolutions**” means the following Stockton City Council Resolutions: Resolution No. 10-0309 (Resolution Reducing Certain Public Facilities Fees as Part of Stockton’s Economic Recovery Incentive Program) adopted on September 14, 2010, Resolution No. 2016-01-12-1206 adopted on January 12, 2016 (extending the period of fee reductions to December 31, 2018), and, to the extent future Impact Fees are less than the Impact Fees in effect as of the Effective Date, those future Stockton City Council Resolutions implementing the Impact Fee reductions.

**“Impact Fees”** means the monetary fees and impositions, other than taxes and assessments, and also referred to as “Public Facilities Fees,” charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of a development project or development of the public facilities and services related to a development project, including any “fee” as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a monetary fee or imposition that meets both the definition of an Impact Fee and the definition of an Exaction will be considered an Impact Fee.

**“Initial Term”** is defined in Section 3.2A(1).

**“Insubstantial Amendment”** is defined in Section 9.2.

**“Litigation Challenge”** is defined in Section 10.6B.

**“Master Development Plan”** is defined in Recital F, and means the Master Development Plan for the Project approved by the City Council concurrently with this Agreement, as amended from time to time.

**“Maximum City Reimbursement”** is defined in Section 5.4B.

**“Mitigated Negative Declaration”** is defined in Recital I.

**“MMRP”** means the Mitigation Monitoring and Reporting Program adopted by the City Council in connection with its approval of the Mitigated Negative Declaration for the Project.

**“Mortgage”** is defined in Section 8.1.

**“Mortgagee”** is defined in Section 8.1.

**“Municipal Code”** means the Municipal Code of the City of Stockton in effect as of the Effective Date.

**“New City Laws”** means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through the power of initiative or otherwise) after the Effective Date.

**“Non-Intended Prevailing Wage Requirement”** is defined in Section 5.5B.

**“Notice”** is defined in Section 13.5.

**“Other Agency Fees”** is defined in Section 5.1D.

**“Other Agency Subsequent Project Approvals”** means Subsequent Project Approvals to be obtained from entities other than City or any City agency, body or department.

**“Parking Authority”** is defined in Recital D.

**“Party/Parties”** is defined in the introductory paragraph preceding the Recitals of this Agreement.

**“Permitted Transfers”** is defined in Section 11.1B.

**“Planning Commission”** means the Planning Commission of the City of Stockton.

**“Prevailing Wage Components”** is defined in Section 5.5A.

**“Prevailing Wage Laws”** is defined in Section 5.5A.

**“Processing Fees”** means all fees charged on a City-wide basis to cover the cost of City processing of development project applications, including plan checking (time and materials) and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which fees are intended to cover the City’s actual and reasonable costs of processing the foregoing.

**“Project”** is defined in Recital G.

**“Project Approvals”** means the Existing Approvals and, when and as approved in accordance with the terms of this Agreement, the Subsequent Project Approvals.

**“Property”** is defined in Recital E.

**“Public Improvements”** is defined in Section 5.4A.

**“Public Facilities Fee Program Administrative Guidelines”** means the Public Facilities Fee Program Administrative Guidelines adopted by the City Council to implement Municipal Code section 16.72.260 (as such guidelines were amended pursuant to City Council Resolution No. 11-0161 adopted June 21, 2011), as such guidelines are in effect as of the Effective Date. A copy of the Public Facilities Fee Program Administrative Guidelines is attached hereto as Exhibit I.

**“Severe Economic Recession”** is defined in Section 3.2D.

**“Subsequent Project Approvals”** is defined in Section 10.1.

**“Term”** is defined in Section 3.2.

**“Transfer”** is defined in Section 11.1A.

**“Water Supply Assessment”** is defined in Recital I.



## ARTICLE 2 GENERAL PROVISIONS

Section 2.1 Ownership of Property. The Parties hereby acknowledge that, as of the Effective Date, Developer has either a fee interest or an equitable interest in all of the parcels comprising the Property by virtue of Developer's fee ownership thereof, or Developer's contractual rights to purchase the City Parcels pursuant to the City Option Agreement and certain of the Developer Parcels pursuant to private third-party agreements. If fee title to all of the parcels in which Developer has an equitable interest is not acquired by Developer or a Developer Affiliate by the fifth (5<sup>th</sup>) anniversary of the Effective Date or such later date as City and Developer may mutually agree, then those parcels as to which Developer or a Developer Affiliate has not acquired fee title shall be excluded from the definition of the "Property" and, upon request by either Party, City and Developer shall execute, acknowledge and record and amendment to this Agreement memorializing the deletion of such parcel or parcels from the Property that is the subject of this Agreement.

Section 2.2 City Representations and Warranties. City represents and warrants to Developer that:

A. City is a municipal corporation, validly existing and in good standing under the laws of the State of California, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council actions and all necessary approvals have been obtained.

C. This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, immediately give written Notice of such fact or condition to Developer.

Section 2.3 Developer Representations and Warranties. Developer represents and warrants to City that:

A. Developer is duly organized, validly existing and in good standing under the laws of the State of California and has all necessary powers under the laws of the State of California to own property and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate, partnership or company action and all necessary shareholder, member or partner approvals, as applicable, have been obtained.

C. This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

D. Developer has a legal or equitable interest in each of the Parcels comprising the Property.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.3 not to be true, immediately give written Notice of such fact or condition to City.

### ARTICLE 3 EFFECTIVE DATE AND TERM

Section 3.1 Effective Date. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective ("**Effective Date**").

Section 3.2 Term.

A. Term of Agreement. Except as to those rights and obligations that expressly extend beyond the stated Term of this Agreement, the "**Term**" of this Agreement shall commence as of the Effective Date and shall continue for the Initial Term as defined in subsection (1) below, plus the duration of any extension as provided in subsection (2) below, or until earlier terminated by mutual consent of the Parties or as otherwise provided by this Agreement.

(1) Initial Term of Agreement. The "**Initial Term**" of this Agreement shall be ten (10) years, commencing on the Effective Date and expiring on the tenth (10<sup>th</sup>) anniversary thereof.

(2) Extensions. Subject to the terms and conditions in this Section 3.2, Developer shall have the right to seek extension of the Initial Term for two (2) additional five (5)-year terms. In order to obtain the first five-year extension, Developer must have substantially completed construction of at least three hundred (300) residential units on the Property, or portions thereof, by the end of the Initial Term. In order to obtain the second five-year extension, Developer must have substantially completed at least six hundred (600) residential units on the Property, or portions thereof, by the end of the first five-year extension.

(3) Extension Request. If Developer desires to seek an extension, Developer must submit a letter addressed to the City Manager requesting such extension ("**Extension Request**"). The Extension Request shall include documentation in a form reasonably acceptable to City demonstrating that the applicable extension condition described in subsection (2) above ("**Extension Condition**") has been satisfied, or will be satisfied, prior to the date that the Initial Term or the first extension period, as applicable, would otherwise expire.

(4) Extension Review. Within 30 days of receipt of the Extension Request and accompanying documentation, the City Manager shall determine whether the Extension Condition has been or will be satisfied. If the City Manager concludes that the Extension Condition has been or will be satisfied, then he or she shall grant the Extension

Request and provide written notice, in a recordable form, that the Agreement has been extended for the extension period, and the Initial Term shall be extended accordingly. If the City Manager determines the Extension Condition has not been satisfied or if there is any dispute regarding whether or not the Extension Condition will be satisfied by the date specified in subsection (2) above, then the Developer shall have 10 business days to present to the City Manager a letter providing written notice of the Developer's appeal of the City Manager's determination to the City Council. The City Council shall hear such an appeal within 30 days of City's receipt of the letter providing written notice of the appeal. If the City Council determines that the Extension Condition has been satisfied, then the City Council shall direct the City Manager to grant the Extension Request and provide Developer written notice, in a recordable form, that the applicable Extension Request has been granted and the Initial Term shall be extended accordingly. If the City Council determines that the Extension Condition has not been satisfied, then the City Council shall document such findings in its action denying the Extension Request. The City Council's decision shall be final, subject to Developer's ability to pursue available remedies as provided in Section 12.3 below.

(5) Memorandum of Extension. Within ten days after the written request of either Party, City and Developer agree to execute, acknowledge and record in the Official Records of San Joaquin County a memorandum evidencing any approved extension of the Term pursuant to this Section 3.2.

B. Termination Upon Expiration of Term. Upon the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 3.2D and Section 12.7 below.

C. Termination Upon Completion of Project Components. This Agreement shall automatically terminate with respect to each completed Project component (including, without limitation, each completed residential unit, multi-family building, mixed-use building, non-residential building, or residential or commercial condominium unit), and the lots or parcels upon which such components have been constructed, and such lots, parcels and completed components shall be released and no longer be subject to this Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the dwelling unit(s), commercial spaces or other structures constructed on such property, parcels or lots.

D. Force Majeure Delay; Extension of Times of Performance. The Term of this Agreement and the Project Approvals and the time within which either Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock outs and other labor difficulties; Acts of God; inclement weather; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; changes in local, state or federal laws or regulations; any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Project, including without limitation any extension authorized by Government Code Section 66463.5(d); enemy action; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; mediation, arbitration, litigation or other administrative or judicial

proceeding involving this Agreement or the Project Approvals, including without limitation any extension authorized by Government Code Section 66463.5(e); Severe Economic Recessions; or other similar event beyond the reasonable control of the Party (each a “**Force Majeure Delay**”). An extension of time for any such cause shall be for the period of the Force Majeure Delay or longer, as may be mutually agreed upon by the Parties. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Developer. “**Severe Economic Recession**” means a significant decline in the residential real estate market, as measured by a decline of more than four percent (4%) in the Home Price Index during the preceding twelve (12) month period. Severe Economic Recession shall continue prospectively on a quarterly basis and remain in effect until the Home Price Index increases for three (3) successive quarters. “**Home Price Index**” means the quarterly index published by the Federal Housing Finance Agency representing home price trends for the Stockton-Lodi Metropolitan Statistical Area. If the Home Price Index is discontinued, Developer and the City shall approve a substitute index that tracks the residential market with as close a geography to the Stockton-Lodi Metropolitan Statistical Area as possible.

E. Findings Regarding Duration of Term. The Term has been established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Property, and obtain the public benefits of the Project. City finds that a Term of such duration is reasonably necessary to assure City of the realization of the public benefits from the Project. In establishing and agreeing to such Term, City has determined that this Agreement incorporates sufficient provisions to permit City to monitor adequately and respond to changing circumstances and conditions in granting permits and approvals and undertaking regulatory actions to carry out the Project.

#### ARTICLE 4 DEVELOPMENT OF PROPERTY

Section 4.1 Vested Rights. City hereby grants to Developer a vested right to develop and construct the Project on the Property, including all on-site improvements and off-site improvements located within the public right-of-way authorized by, and in accordance with, the Project Approvals and this Agreement. As noted in Recital G, City is currently working on a General Plan update which is expected to address residential density in the downtown area, and it is anticipated that the downtown area may be identified for higher residential density limits than those allowed under the current General Plan. If the General Plan is amended to increase the downtown densities, the maximum residential densities for the Project, as set forth in the Existing Approvals, will be automatically increased (but in no event decreased) to the levels set forth in the General Plan as it may be amended in connection with such General Plan update review. Except as otherwise provided in this Agreement, no New City Laws that conflict with this Agreement, the Applicable City Regulations, or the Project Approvals shall apply to the Project or the Property. For purposes of this Section 4.1 and Sections 4.3 and 4.6, the word “conflict” means any modification that purports to: (i) limit the permitted uses of the Property, the maximum density and intensity of use (including but not limited to floor area ratios, dwelling units per acre or the overall maximum number of residential units), or the maximum height or size of proposed buildings in a manner that is inconsistent with the Existing Approvals; (ii) impose Exactions, other than as expressly provided in the Existing Approvals; (iii) impose conditions upon development of the Property other than as permitted by Applicable Law, Changes in the Law, and the Existing Approvals; (iv) limit the timing, phasing, sequencing, or

rate of development of the Property or delay in a more than insignificant way the development of the Project; (v) limit the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with the Existing Approvals; (vi) limit or control the ability to obtain public utilities, services, infrastructure, or facilities (provided, however, nothing herein shall be deemed to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future); (vii) require the issuance of additional permits or approvals by the City other than those required by Applicable Law and the Existing Approvals; (viii) limit the processing or procuring of applications and approvals of Subsequent Project Approvals; (ix) materially increase the cost of performance of, or preclude compliance with, the Project Approvals; (x) increase the permitted Impact Fees or add new Impact Fees; (xi) establish, enact, increase, or impose against the Project or the Property any fees, special taxes or assessments other than those specifically permitted by this Agreement, including Section 5.6; (xii) apply to the Project any New City Laws that are not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites (i.e., to all for sale residential projects, to all rental residential projects, to all office projects, to all mixed-use projects etc.); or (xiii) impose against the Project any condition, dedication or other Exaction not specifically authorized by Applicable Law or the Existing Approvals. To the extent that New City Laws conflict with the vested rights granted pursuant to this Agreement, they shall not apply to the Property or the Project, except as provided in Section 4.3, below.

Section 4.2 Development and Design Standards. The Project shall be developed in substantial conformance with the Existing Approvals and Applicable City Regulations, including the General Plan, the Master Development Plan, and the City Zoning Ordinance, each as in effect as of the Effective Date, and the yet-to-be adopted Subsequent Project Approvals. Except as otherwise provided in this Agreement, the City's ordinances, resolutions, rules, regulations, and official policies governing the permitted uses of the Project, density and intensity of development, height and size of proposed buildings, and development standards shall be those in force on the Effective Date. Project design and materials will need to meet high-quality urban design standards which are outlined in general terms in the General Plan and specifically set forth in the Master Development Plan. City's review of applications for design review of particular elements or phases of the Project shall be in accordance with the Existing Approvals and the Applicable City Regulations.

Section 4.3 Reservations of Authority. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Project:

A. Existing or new regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are applied on a city-wide basis to all substantially similar types of development projects and properties.

B. Existing or new regulations governing construction standards and specifications, including City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the City at the time of building permit application.

C. Any New City Laws applicable to the Property or Project, which do not conflict with this Agreement or the Project Approvals.

D. New City Laws adopted on a uniformly applied, city-wide or area-wide basis, which may be in conflict with this Agreement, but which are necessary to protect persons or property from dangerous or hazardous conditions which create an immediate threat to the public health or safety or create a physical risk, based on findings by the City Council identifying the dangerous or hazardous conditions requiring such changes in the law, why there are no feasible alternatives to the imposition of such changes, and how such changes would alleviate the dangerous or hazardous condition, shall be applied to Developer in a uniform, equitable, and proportionate manner along with all other properties, public and private, which are impacted by that public health or safety concern.

Section 4.4 Regulation by Other Public Agencies. Developer acknowledges and agrees that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Developer shall, at the time required by Developer in accordance with Developer's construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate in good faith with Developer in Developer's effort to obtain such permits and approvals.

Section 4.5 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals. In the event that this Agreement is terminated prior to the expiration of the Term, the term of any Project Approval and the vesting period for any subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, which shall commence to run on the date that the termination of this Agreement takes effect.

Section 4.6 Initiatives. If any New City Law is enacted or imposed by an initiative or referendum, which New City Law would conflict with the Project Approvals or this Agreement or reduce the development rights or assurances provided by this Agreement, such New City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting subdivision maps, use permits, building permits, occupancy permits, or other entitlements to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project. City shall cooperate in good faith with Developer and undertake such actions as may be reasonably necessary to ensure this Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot and fulfill any legal responsibility to defend a ballot measure passed by its voters, shall not support, adopt or enact any New City Law, or

take any other action which would violate the express provisions or spirit and intent of this Agreement.

Section 4.7 Timing of Development. City and Developer acknowledge that Developer cannot at this time predict which portions of the Project will be included within any particular phase of the Project, when or the rate at which the phases will be developed, or the order in which each phase will be developed. Such decisions depend on numerous factors that may not be fully within the control of Developer, such as market demand, interest rates, absorption, availability of financing and other similar factors. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties hereto to avoid that result. Therefore, notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that Developer shall have the vested right (but not the obligation) to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment, consistent with the provisions of this Agreement and Project Approvals.

Section 4.8 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by (i) changes in State or Federal laws or (ii) any regional governmental agency that, due to the operation of State law (and not the act of City through a memorandum of understanding, joint exercise of powers authority, or otherwise that is undertaken or entered into following the Effective Date) ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such Changes in the Law. In such event, this Agreement together with any required modifications shall continue in full force and effect. In the event that the Changes in the Law operate to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement by Notice to City. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) such Changes in the Law or their applicability to the Project and, in the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, the times of performance extended in accordance with Section 3.2D, and, if the Term of this Agreement would otherwise terminate during the period of any such challenge, the Term shall be extended for the period of any such challenge.

Section 4.9 Expansion of Development Rights. If any New City Laws or Changes in the Law expand, extend, enlarge or broaden Developer's rights to develop the Project, then, (i) if such law is mandatory, the provisions of this Agreement shall be modified as may be necessary to comply or conform with such new law, and (ii) if such law is permissive, the provisions of this

Agreement may be modified, upon the mutual agreement of Developer and City. Immediately after enactment of any such new law, upon Developer's request, the Parties shall meet and confer in good faith to prepare such modification in the case of a mandatory law or to discuss whether to prepare a proposed modification in the case of a permissive law. Developer shall have the right to challenge City's refusal to apply any new law mandating expansion of Developer's rights under this Agreement, and in the event such challenge is successful, this Agreement shall be modified to comply with, or conform to, the new law.

Section 4.10 Wastewater, Sanitary Sewer and Potable Water Capacity. Based on the Water Supply Assessment and other relevant utility and resource capacity studies and planning documents, City has found the Project to be consistent with the General Plan which anticipates that there will be sufficient potable water, as provided by the California Water Service Company ("Cal Water"), and sanitary sewer capacity, as provided by the City's Municipal Utility Department ("MUD"), to serve future development contemplated by the General Plan, including the Project. However, as noted in Section 4.1 above, nothing in this Agreement is intended to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future. In the event Developer's lenders or financing partners request issuance of sanitary sewer "will serve" letters as a condition of providing debt or equity financing for the Project, City agrees to issue such letters on terms reasonably acceptable to City consistent with Sections 4.10A and 4.10B.

A. Wastewater Provisions. The City agrees to the following allocations of wastewater as set forth below, which will constitute the "will serve" obligation of the City for the Project. Developer's rights to such allocations shall be vested for the Term of this Agreement.

Daily allocation of up to 578,000 gallons per day (gpd) of treatment capacity (inclusive of existing use), which includes a reserve of 80,000 gpd.

Wastewater connection fees will be the lower of (i) the rates in effect at the time of connection, or (ii) the FY 2015-16 rates as set forth in Exhibit D, in each case, subject to any generally applicable fee reductions.

Developer shall be entitled to purchase the entire wastewater allocation upon issuance of the first building permit for the Project, or in phases, as needed. The City will allow lot to lot and parcel to parcel transfer of credits.

Nothing herein shall be deemed to prohibit City from requiring sanitary sewer and/or storm water facility analysis to examine the anticipated sewer and storm water generation from each proposed building that contributes new flows to sanitary sewer lines and mains and/or storm water facilities in the Master Development Plan area and determine pipe and facility size capacities. Consistent with MMRP Mitigation Measures UTIL-1, if such analysis reveals that existing lines and/or mains are inadequate to handle the net new sanitary sewer output (gallons per day) or storm water flow of each such building, City may require as a condition of building approval that Developer cause the inadequate sanitary sewer lines and/or mains and/or storm water facilities, as applicable, to be replaced or upsized to support development of such building, including at downstream locations, either as part of the proposed building development or in



conjunction with any City plans for sanitary sewer line or storm water facility replacements or upsizing.

B. Potable Water Provisions. Developer shall be responsible for obtaining rights to an allocation from Cal Water for the Project of up to 1.77 acre feet (inclusive of existing use) of potable water, which includes a reserve of up to 0.24 acre feet to serve the Project. City, at Developer's expense, will cooperate with Developer in its efforts to obtain vesting of such water rights.

Section 4.11 Project Approvals and Applicable City Regulations. Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Existing Approvals and Applicable City Regulations, one (1) set for City and one (1) set for Developer, to which shall be added from time to time, Subsequent Project Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable City Regulations, there will be a common set available to the Parties.

## ARTICLE 5 OTHER RIGHTS AND OBLIGATIONS OF THE PARTIES

### Section 5.1 Developer Fees.

A. Impact Fees. No Impact Fees shall be applicable to the Project except as provided in the Existing Approvals. City understands that the assurances by City concerning Impact Fees set forth below were a material consideration for Developer agreeing to pay the Impact Fees set forth in this Agreement and the Existing Approvals and provide the public benefits described in this Agreement and the Master Development Plan. Developer shall pay when due (subject to Section 5.2D below) all existing Impact Fees applicable to the Project (as shown in Exhibit B), if any, at the lower of (i) the rates in effect as of the Effective Date (including all fee reduction credits available pursuant to the Impact Fee Resolutions), or (ii) the rates in effect when such existing Impact Fees are due and payable. If, following the Effective Date, City should adopt an Impact Fee reduction programs which temporarily reduces applicable Impact Fees below the Impact Fees in effect as of the Effective Date, Developer shall receive the benefit of the reduced Impact Fees only for so long as the temporary fee reduction remains in effect. Developer shall not be required to pay (a) any escalations in such Impact Fees, or (b) any new Impact Fees enacted or established after the Effective Date. The Impact Fees itemized on Exhibit B represent the Parties' good faith effort to identify the Impact Fees applicable to the Project as of the Effective Date. Developer, at its option, may decline the protections from new Impact Fees afforded by this Section 5.1A and elect, if it so chooses, to pay some or all new Impact Fees that may be adopted by City after the Effective Date.

B. Processing Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any applicable Processing Fees, City may charge, and Developer agrees to pay, all Processing Fees in effect on a City-wide basis from time to time at the rates in effect on the date the building, design review or other permit application is submitted to City.

C. Connection Fees. Developer shall pay Connection Fees assessed by third-party utility providers and other agencies assessing such fees at the rates in effect from time to time. The Connection Fees itemized on Exhibit D represent the Parties' good faith effort to identify Connection Fees in effect as of the Effective Date.

D. Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law ("**Other Agency Fees**").

Section 5.2 Fee Credits. Developer shall receive credit for the payment of Impact Fees in accordance with the provisions of Municipal Code Section 16.72.260.D, the Public Facilities Fee Program Administrative Guidelines, and this Section 5.2.

A. Fees Credits Generally.

(1) For each public facility for which Developer desires to receive a credit/reimbursement against Impact Fees, Developer shall submit to City a request for credit/reimbursement in accordance with Municipal Code Section 16.72.260.D and the Public Facilities Fee Program Administrative Guidelines. Developer shall then enter into an agreement for credit/reimbursement with City at the time specified in Section 16.72.260.D and the Public Facility Fee Program Administrative Guidelines. City shall not unreasonably withhold or delay its approval of any of Developer's fee credit/reimbursement requests, and shall specify in writing to Developer within forty-five (45) days after receipt of any such fee credit/reimbursement request any additional information required by City in order for Developer to obtain such credit/reimbursement.

(2) For each public facility for which Developer desires to receive a fee credit/reimbursement against Impact Fees, Developer and City shall enter into an agreement in accordance with Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, which shall specify the amount of the credit/reimbursement. The fee credit/reimbursement agreement shall be in a form reasonably acceptable to City Attorney and shall be entered into at the time of the improvement agreement covering the applicable public facility. In accordance with Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, the amount of credit/reimbursement available to Developer for land dedication shall be equal to the amount identified under Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, and the amount of credit/reimbursement available to Developer for facilities shall not exceed Developer's actual costs of providing the specified public facility, to be evidenced by the submittal of written documentation to the satisfaction of the City's Director of Community Development in accordance with the Public Facilities Fee Program Administrative Guidelines. Developer's costs shall include actual hard and soft out-of-pocket costs, including without limitation land use planning design and engineering costs and permit and construction fees. All such costs shall be evidenced by Developer's submission of paid invoices or other documentation reasonably acceptable to City. For purposes of Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, City finds that it is in City's best interest to allow Developer to provide the Public Improvements.

(3) City shall maintain a record of each fee credit for which City and Developer enter into a fee credit agreement. Each time an Impact Fee is due in accordance with Municipal Code Section 16.72.260, City shall determine if Developer has an applicable fee credit available, and if so, City shall apply the fee credit against the Impact Fees due, until the

applicable fee credit is exhausted. After an applicable fee credit is exhausted, Impact Fees shall be calculated in accordance with Section 5.1A, above.

**B. Parkland Dedication Fees and Credits.**

(1) In connection with subdivisions for residential development, Stockton Municipal Code Section 16.72.060.C, requires the dedication of parkland and/or the payment of parkland dedication Impact Fees in lieu thereof, sufficient to meet the City's parkland requirement as calculated under the following formula:

$X = .003(UP)$  with:

X = Amount of park land required, in acres

U= Total number of approved dwelling units in the subdivision

P= The projected average number of residents per dwelling unit in the proposed subdivision, as determined by the Director.

(2) Given the urban infill nature of the Project, the Parties agree that parkland dedications will not be required. Rather, Developer shall be required to pay parkland dedication in lieu Impact Fees pursuant to Municipal Code Section 16.72.060.C.4 and the City's parkland in lieu fee Administrative Guidelines, and in accordance with Section 5.1A above. Notwithstanding the foregoing, if (i) Developer and City mutually agree to include within the Project one or more public parklets, public mini parks or other similar public parkland areas; (ii) such areas are irrevocably offered for dedication, in fee or via easement, to the City; and (iii) such areas otherwise meet the requirements of City's applicable park standards and guidelines, then Developer shall receive a credit against parkland dedication Impact Fees for the land on which such parklets, mini-parks or other similar parks facilities are located.

(3) In calculating the amount of the parkland dedication in lieu Impact Fees required in connection with the residential portion of the Project, Developer shall receive a credit for any residential units existing on the Property as of the Effective Date (regardless of whether such units are vacant or occupied, and regardless of whether such units will be demolished or renovated) so that only the net additional dwelling units to be added by the Project shall be subject to the parkland dedication in lieu Impact Fee.

**C. Public Facilities Fees and Credits.** Developer shall receive a credit against applicable public facilities Impact Fees, to the extent any are due, for the hard and soft costs of constructing all Eligible Public Facilities. "**Eligible Public Facilities**" means and includes that portion of the Public Improvements (defined in Section 5.4 below) that can be financed with public facilities Impact Fees assessed by City pursuant to Stockton Municipal Code section 16.72.260 and City's implementing regulations. To the extent Developer pays for construction of Eligible Public Facilities but is unable to take advantage of Impact Fee credits because no Impact Fees are due and payable, City shall have no obligation to reimburse Developer from City general fund monies, but Developer shall be entitled to seek reimbursement from owners/developers of Additional Benefitted Properties as provided in Section 5.4D below.

D. Fee Deferrals. Notwithstanding any contrary provision of this Agreement, Developer may elect to apply for, and City shall consent to, deferred payment of all or a portion of Impact Fees, Processing Fees and/or Connection Fees in accordance with, and to the extent permitted by, the applicable provisions of the Public Facilities Fee Program Administrative Guidelines.

Section 5.3 Financing Tools for Public Improvement Capital Costs. Upon Developer's request, City will cooperate with Developer in the establishment of any mechanism that is legal and available to the City to aid in financing the construction of Project public facilities and infrastructure. These mechanisms may include, without limitation, direct funding of condemnation costs and construction costs, acquisition of improvements, establishing reserve accounts to fund capital improvement program projects, Mello-Roos Community Facilities Districts, Landscaping and Lighting Districts, Geological Hazard Abatement Districts, cooperation in connection with the issuance of tax-exempt financing, or other similar mechanisms. Any such request by Developer must be made to the City Manager in written form and must outline the purposes for which any such mechanism will be established or issued, the general terms and conditions upon which it will be established or issued and a proposed timeline for its establishment or issuance. City reserves discretion with respect to consideration of any proposed public funding mechanisms and nothing in this Agreement is intended to or shall limit City's ability to approve or disapprove such mechanisms in its sole reasonable discretion and nothing in this Agreement is intended to or shall prejudice or commit to City regarding the findings and determinations to be made with respect thereto. Developer shall bear the cost of establishing any Mello-Roos Community Facilities District, Landscaping and Lighting District, Geological Hazard Abatement District or similar financing district that Developer requests to be established to finance Project public facilities and infrastructure in proportion to the extent to which such district will benefit the Property and the Project.

#### Section 5.4 Public Improvement Obligations.

A. In General. Except as otherwise provided in Section 5.4C below, as a condition of approval of each phase of development of the Project, Developer shall construct or install, or cause the construction and installation of: (i) those infrastructure improvements, including water line upsizings, specifically identified in the MMRP, to the extent necessary to serve the applicable phase of development; (ii) public improvements fronting the various privately-owned components of the applicable phase of development, including all curbs, gutters, sidewalks, storm-drains, utility upgrades and replacements, including undergrounding work, street trees, street furniture, lighting, roadway repaving, bus shelters, bike lanes, and pedestrian cross walks located on, under and within the public rights-of-way areas; and (iii) upgrades, replacements and/or upsizings of sanitary sewer lines and/or mains and/or storm water facilities, if and to the extent a subsequent study prepared in implementation of MMRP Mitigation Measure UTIL-1 indicates that existing sanitary sewer lines and/or mains and/or storm water facilities are inadequate to handle the net new sanitary sewer output (gpd) and/or storm water flow of the applicable phase of development (collectively, "**Public Improvements**") at the time such phase is undertaken, all in accordance with the design, plan and material standards set forth in the Master Development Plan and Applicable City Regulations. Except as otherwise provided above, Developer shall not be obligated to construct or install any other on- or off-site public improvements in connection with development of the Project. City shall use good faith, diligent

efforts to work with Developer to ensure that each component of the Public Improvements required in connection with the Project is expeditiously reviewed and considered for acceptance by City on a phased basis as discrete components of the Public Improvements are completed. Developer may offer dedication of Public Improvements in phases consistent with City approvals for such Public Improvements, and City shall not unreasonably withhold, condition or delay acceptance of such phased dedications or refuse phased releases of bonds or other security so long as all other conditions for acceptance have been satisfied. Developer's obligation to construct the Public Improvements shall be set forth in one or more public improvement agreements to be entered into by the Parties on or before approval of a final subdivision map for the applicable portion of Project, or if no map is required, permit conditions of approval for the applicable portion of the Project. Upon acceptance of the public improvements, or components thereof, City shall release to Developer any bonds or other security posted in connection with performance thereof, other than warranty period security, as more fully provided in the applicable improvement agreements between City and Developer. Except as otherwise provided in such improvement agreements with respect to Developer's warranty period obligations, Developer shall have no obligation to maintain the public infrastructure following City's acceptance thereof.

B. Downtown Infrastructure Infill Incentive Program. Developer has the right to participate in the City's Downtown Infrastructure Infill-Incentive Program adopted by the City Council on July 7, 2015 by Resolution No. 2015-07-07-1502, attached hereto as Exhibit F. Projects that qualify under the program guidelines are eligible to receive a "**Maximum City Reimbursement**" of up to \$900,000 per year for qualifying public infrastructure improvements. If the cost of the Public Improvements exceeds the \$900,000 annual cap, the City will reimburse the additional costs in subsequent years, subject to availability of funds in the Downtown Infrastructure Infill Incentive Program. One or more Infill Infrastructure Reimbursement Agreements approved by the City Council and detailing the Public Improvements to be constructed, the cost of such improvements, the source of funds, and the terms of City's reimbursement to Developer will be executed between the Developer and City for qualifying projects. The Infill Infrastructure Reimbursement Agreements and City's reimbursement obligations thereunder will remain effective notwithstanding any subsequent termination of the Downtown Infrastructure Infill Incentive Program.

C. City Option to Construct. In lieu of Developer's construction and installation of the Public Improvements as provided in Section 5.4A above, City, at its option, may construct and install some or all of the Public Improvements in advance of Developer's private development work using Impact Fee program monies or other funds, including State and/or Federal grant monies, that may be available to City. City will coordinate with Developer the phasing of construction and installation of any work of Public Improvements undertaken by City to ensure that substantial completion of applicable portions of the Public Improvements occurs no later than the date of substantial completion of the associated private improvements. If City opts to construct and install all or a portion of such Public Improvements in advance of Developer's work of private improvements, Developer shall have no obligation to construct or re-construct such Public Improvements, but Developer shall be obligated to repair any damage that may result from the private improvement work.

D. Potential Reimbursements to Developer. Other properties in downtown Stockton (“**Additional Benefitted Properties**”) may be determined by City to benefit from Developer’s dedication or construction of all or a portion of the Public Improvements. In such instances, City shall use reasonable efforts, consistent with applicable law and procedures, to identify such Additional Benefitted Properties and to cause the owners/developers of such Additional Benefitted Properties to reimburse to Developer, through City, their fair share of the costs incurred by Developer, based on a benefit formula approved by the City Council. Such benefit formula shall be based on ascertainable criteria, taking into account to the extent ascertainable, the proportionate benefit conferred on the Additional Benefitted Properties. The reimbursement may potentially be accomplished through inclusion in a Mello-Roos Community Facilities District, Landscaping and Lighting District, Geological Hazard Abatement District, or other similar district as described in Section 5.3 above. Consistent with applicable law and procedures, City, at Developer’s expense, shall use good faith diligent efforts to collect, and establish a mechanism for future collection (irrespective of the term of this Agreement), any amounts reimbursable to Developer hereunder upon application to City by owners or developers of the Additional Benefitted Properties for land use and development entitlements. Developer agrees and acknowledges that City’s obligation is limited to good faith diligent efforts and is subject to applicable laws and procedures as herein provided, and that City shall have no obligation to pay or reimburse Developer out of City’s general fund for any portion of Developer’s costs therefor.

#### Section 5.5 Prevailing Wage Requirements.

A. In General. Developer acknowledges and agrees that all Public Improvements required as a condition of approval for an individual phase of development and constructed by Developer or its contractors or subcontractors and paid for in whole or in part with public funds as provided in Section 5.4, above (collectively, the “**Prevailing Wage Components**”) will constitute “public works” as defined in California Labor Code Section 1720(a)(1) and will be subject to prevailing wage requirements. Accordingly, Developer shall comply with, and cause its contractors and subcontractors to comply with, all State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to “public works,” including the payment of prevailing wages (collectively, “**Prevailing Wage Laws**”) in connection with such Prevailing Wage Components. City and Developer each acknowledge and agree that it is a condition of approval of the Project that Developer construct the Prevailing Wage Components.

B. Non-Intended Prevailing Wage Requirements. Except as provided in Section 5.5A above, nothing in this Agreement shall in any way require, or be construed to require, Developer to pay prevailing wages with respect to any work of construction or improvement within the Project (a “**Non-Intended Prevailing Wage Requirement**”). But for the understanding of the Parties as reflected in the immediately preceding sentence, the Parties would not have entered into this Agreement based upon the terms and conditions set forth herein. Developer and City have made every effort in reaching this Agreement to ensure that its terms and conditions will not result in a Non-Intended Prevailing Wage Requirement. If, despite such efforts, any provision of this Agreement shall be determined by any court of competent jurisdiction to result in a Non-Intended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the Parties

hereby agree that, in such event, this Agreement shall be reformed such that each provision of this Agreement that results in the Non-Intended Prevailing Wage Requirement will be removed from this Agreement as though such provisions were never a part of the Agreement, and, in lieu of such provision(s), replacement provisions shall be added as a part of this Agreement as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the Non-Intended Prevailing Wage Requirement.

#### Section 5.6 Taxes and Assessments.

A. Limitation. The Parties agree that as of the Effective Date, the assessments listed in Exhibit G are the only City assessments applicable to the Property. As of the Effective Date, City is unaware of any pending efforts to initiate, or consider applications for new or increased special taxes or assessments covering the Property, or any portion thereof. City shall retain the ability to initiate or process applications for the formation of new assessment districts or imposition of new taxes covering all or any portion of the Property. City may impose new taxes and assessments, other than Impact Fees, on the Property in accordance with the then applicable laws, but only if such taxes or assessments are adopted by or after Citywide voter approval, or approval by landowners subject to such taxes or assessments, and are imposed on other land and projects of the same category within the jurisdiction of City in a reasonably proportional manner, and, as to assessments, only if the impact thereof does not fall disproportionately on the Property as compared to the benefits accruing to the Property as indicated in the engineers report for such assessment district. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the Impact Fees to be paid by Developer under the Project Approvals or this Agreement, such Impact Fees to be paid by Developer shall be subject to reduction/credit in an amount equal to Developer's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such Impact Fees to be paid by Developer under the Project Approvals or this Agreement.

B. Mills Act Tax Reduction. City is not currently participating in the State's Mills Act (Government Code Section 50280 *et seq.*) tax reduction program. Should City agree to participate in such program in the future, then, subject to Developer's agreement to enter into a historical property contract in a form reasonably acceptable to City and in satisfaction of other applicable criteria set forth in the Mills Act, Developer will have the right, at its option, to receive a property tax reduction with respect to any historic building that Developer may wish to refurbish in connection with the Project.

C. New Tax Increment Districts. If City desires to adopt an enhanced infrastructure financing district pursuant to SB 628 (2014), a community redevelopment investment authority district pursuant to AB 2 (2015) or other tax increment financing district in the downtown Stockton area, and if the establishment of such district requires property owner approval, Developer shall consider in good faith City requests for approval of same.

Section 5.7 Potential General Plan Density Increases. The Parties acknowledge that the densities described in the Master Development Plan, as approved concurrently with this Agreement, conform to the maximum allowable densities set forth in the General Plan in effect as of the Effective Date. If and to the extent City's comprehensive General Plan update process anticipated to be completed in 2016/17 increases the maximum allowable densities permitted in the area covered by the Master Development Plan, Developer may submit and City agrees to consider in good faith proposed amendments to the Master Development Plan to increase the maximum allowable densities of the properties subject to the Master Development Plan to be consistent with the increased density levels as set forth in the updated General Plan. The Parties acknowledge that CEQA compliance will be required in connection with any such amendment of the Master Development Plan, and City shall retain the discretion before action on any such amendment to (i) identify and impose mitigation measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Project, as modified by the proposed Master Development Plan amendment, against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided; or (iv) determine not to proceed with the proposed modifications to the Project.

## **ARTICLE 6 PUBLIC BENEFITS**

The Parties acknowledge that development of the Property pursuant to this Agreement and the Master Development Plan will contribute to the revitalization of downtown Stockton and the elimination of blight, will create housing and job opportunities, and will result in increased property and sales tax revenue to the City.

## **ARTICLE 7 ANNUAL REVIEW**

### Section 7.1 Periodic Review.

A. As required by California Government Code Section 65865.1 and Section 16.128.110 of the Development Agreement Ordinance, the City of Stockton Planning Commission shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement ("**Annual Review**"). Specifically, the Annual Review shall be conducted for the purposes of determining good faith compliance with the terms and/or conditions of this Agreement. Each Annual Review shall also document the status of Project development.

B. The Annual Review shall be conducted pursuant to SMC Section 16.128.110; provided, however, Developer shall receive not less than ten (10) days' prior written notice of any City Council or Planning Commission hearing conducted in connection with any Annual Review, and shall be permitted to present evidence at any such hearing.

C. Nothing in this Article 7 or in the Applicable City Regulations, including SMC Section 16.128.110, shall operate as, or be deemed to serve as, a substitute for the notice of default and cure provisions set forth in Article 12 below. Without limiting the generality of the foregoing, the Parties acknowledge and agree that the notice and cure procedures associated with



the Annual Review procedures described in this Article 7 are in addition to, and not in lieu of, the notice and cure provisions set forth in Article 12.

## **ARTICLE 8 MORTGAGEE PROTECTION**

Section 8.1 Mortgagee Protection. This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property and/or the Project ("**Mortgage**"). This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

Section 8.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 8.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of the Project, or any portion thereof, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals and this Agreement nor to construct any improvements thereon or institute any uses other than those uses and improvements provided for or authorized by this Agreement and the Project Approvals.

Section 8.3 Notice of Default to Mortgagee; Right to Cure. With respect to any Mortgage granted by Developer as provided herein, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

A. City, upon serving Developer any notice of Default, shall also serve a copy of such notice upon any Mortgagee at the address provided to City, and no notice by City to Developer hereunder shall affect any rights of a Mortgagee unless and until a copy thereof has been so served on such Mortgagee; provided, however, that failure so to deliver any such notice shall in no way affect the validity of the notice sent to Developer as between Developer and City.

B. In the event of a Default by Developer, any Mortgagee shall have the right to remedy, or cause to be remedied, such Default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the notice referred to in Section 8.3A above, or (ii) the expiration of the period provided herein for Developer to remedy or cure such Default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer; provided, however, that (a) if such Default is not capable of being cured within the timeframes set forth in this Section 8.3B and Mortgagee commences to cure the Default within such timeframes, then Mortgagee shall have such additional time as is required to cure the Default so long as Mortgagee diligently prosecutes the cure to completion and (b) if possession of the Property (or portion thereof) is required to effectuate such cure or

remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

C. Any notice or other communication which City shall desire or is required to give to or serve upon the Mortgagee shall be in writing and shall be served in the manner set forth in Section 13.5, addressed to the Mortgagee at the address provided by Mortgagee to City. Any notice or other communication which Mortgagee shall give to or serve upon City shall be deemed to have been duly given or served if sent in the manner and at City's address as set forth in Section 13.5, or at such other address as shall be designated by City by notice in writing given to the Mortgagee in like manner.

Section 8.4 No Supersedure. Nothing in this Article 8 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 8 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 8.3.

Section 8.5 Technical Amendments to this Article 8. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the Project on the Property or any refinancing thereof and to otherwise cooperate in good faith, at Developer's expense, to facilitate Developer's negotiations with lenders.

## **ARTICLE 9 AMENDMENT OF AGREEMENT AND EXISTING APPROVALS**

Section 9.1 Amendment of Agreement by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto or their successors-in-interest or assigns.

Section 9.2 Insubstantial Amendments to Agreement. Any amendment to this Agreement which, in the context of the overall Project contemplated by this Agreement, does not substantially affect (i) the Term of this Agreement; (ii) permitted uses of the Property; (iii) provisions for the reservation or dedication of land; (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions; (v) the density or intensity of use of the Property or the maximum height or size of proposed buildings; or (vi) the nature, timing of delivery, or scope of public improvements required by the Project Approvals, shall be deemed an **"Insubstantial Amendment"** and shall not, except to the extent otherwise required by law or this Agreement, require notice or public hearing before the Parties may execute an amendment hereto. The City Manager shall have the authority to execute an Insubstantial Amendment or, in his or her discretion, seek approval of an Insubstantial Amendment by City resolution.

Section 9.3 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors.

Section 9.4 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the Effective Date. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The Term of this Agreement may be extended for the duration of the period during which such new law or regulation precludes compliance with the provisions of this Agreement.

Section 9.5 Amendments to Project Approvals. Project Approvals (except for this Agreement for which the amendment process is set forth in Section 9.1 through 9.4) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer at its sole discretion. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property or portion thereof, the maximum density and/or number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Agreement, without requiring an amendment to this Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Law. City shall not request, process or consent to any amendment to the Project Approvals that would affect the Property or the Project, or applicable portion thereof, without Developer's prior written consent.

Section 9.6 Administrative Amendments of Project Approvals. Upon the request of Developer for an amendment or modification of any Project Approvals (except for this Agreement for which the amendment process is set forth in Section 9.1 through 9.4), the City Manager or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Agreement and the Applicable Law, and may be processed administratively. If the City Manager or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Agreement and the Applicable Law, the amendment or modification shall be determined to be an "**Administrative Amendment**," and

the City Manager or his/her designee may approve the Administrative Amendment, without public notice or a public hearing. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

Section 9.7 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the Term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer may effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 9.7 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 9.1 or Section 9.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

Section 9.8 CEQA. In connection with its consideration and approval of the Master Development Plan, the City has prepared and approved the Mitigated Negative Declaration, which evaluates the environmental effects of the Project, and has imposed all feasible mitigation measures to reduce the significant environmental effects of the Project. Nothing contained in this Agreement is intended to prevent or limit the City from complying with CEQA. In acting on Subsequent Project Approvals, City will rely on the Mitigated Negative Declaration to the fullest extent permissible by CEQA as determined by City in its reasonable discretion. In the event supplemental or additional review is required for a Subsequent Project Approval, City shall limit such supplemental or additional review to the scope of analysis mandated by CEQA and shall not impose new mitigation measures except as legally required, all as determined by the City as the lead agency under CEQA in its reasonable discretion.

## ARTICLE 10 COOPERATION AND IMPLEMENTATION

Section 10.1 Subsequent Project Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals (collectively, “**Subsequent Project Approvals**”), will be necessary or desirable for implementation of the Project. The Subsequent Project Approvals may include the following ministerial and discretionary applications and permits: amendments of the Existing Approvals, grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications, parcel maps and/or subdivision maps, conditional use permits, design review, demolition permits, improvement agreements, encroachment permits, and any amendments to, or repealing of, any of the foregoing. The parties agree that the Water Supply Assessment constitutes proof of availability of a sufficient water supply for the Project and approval of any tentative map prepared for the Project shall rely

on such assessment. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon Project development and construction that are inconsistent with the Existing Approvals and the terms and conditions of this Agreement.

Section 10.2 Scope of Review of Subsequent Project Approvals. By approving the Existing Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Project Approval to change the policy decisions reflected by the Existing Approvals or otherwise to prevent or delay development of the Project as set forth in the Existing Approvals. Instead, the Subsequent Project Approvals shall be deemed to be tools to implement those final policy decisions. The scope of review of applications for Subsequent Project Approvals shall be limited to a review of substantial conformity with the Project Approvals and compliance with the Applicable Law, including CEQA. Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Project Approval for the Project. At such time as any Subsequent Project Approval applicable to the Property is approved by City, then such Subsequent Project Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a "Project Approval" under this Agreement.

Section 10.3 Processing Applications for Subsequent Project Approvals.

A. Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Project Approvals.

B. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Project Approval, City shall, to the fullest extent allowed by Applicable Law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer's currently pending Subsequent Project Approval applications including: (i) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for concurrent, expedited planning and processing of each pending Subsequent Project Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending Subsequent Project Approval application.

Section 10.4 Other Agency Subsequent Project Approvals; Authority of City. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Agreement in all respects when dealing with any such agency regarding the Property. City shall cooperate with Developer, to the extent

appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Project Approvals.

Section 10.5 Implementation of Necessary Mitigation Measures. Developer shall, at its sole cost and expense, comply with the MMRP requirements as applicable to the Property and Project.

Section 10.6 Cooperation in the Event of Legal Challenge.

A. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or construction of the Project shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Project Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

B. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the Project Approvals ("**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information.

C. If Developer desires to contest or defend a Litigation Challenge and the Parties determine to undertake a joint defense or contest of such Litigation Challenge: (i) the Parties will cooperate in the joint defense or contest of such challenge; (ii) Developer shall select the attorney(s) to undertake such defense, subject to City's approval, which shall not be unreasonably withheld; (iii) Developer will take the lead role in defending such Litigation Challenge; (iv) upon Developer's request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege; (v) Developer shall reimburse City, within forty-five (45) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge;

D. If Developer desires to contest or defend any Litigation Challenge and if at any time one or both Parties determine that they require separate representation: (i) Developer shall take the lead role defending such Litigation Challenge; (ii) Developer shall be separately represented by the legal counsel of its choice; (iii) in any action or proceeding, City shall be separately represented by the legal counsel of its choice, selected after consultation with Developer, with the reasonable costs of such representation to be paid by Developer; (iv) Developer shall reimburse City, within forty-five (45) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge; and (v) upon Developer's request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege.

E. Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees or cost awards, assessed or awarded against City by way of judgment, settlement, or stipulation entered in connection with a Litigation Challenge. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto.

Section 10.7 Revision to Project. In the event of a court order issued as a result of a successful Litigation Challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Project Approvals, or (ii) any conflict with the Project Approvals or frustration of the intent or purpose of the Project Approvals.

Section 10.8 State, Federal or Case Law. Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (i) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement, and (ii) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

Section 10.9 Defense of Agreement. City, at Developer's expense, shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Agreement to render it valid and enforceable to the extent permitted by Applicable Law.

Section 10.10 Indemnity. Developer shall indemnify, at City's request defend, and hold the City Parties harmless from and against any and all costs and expenses (including attorney and legal fees), damages, liabilities, claims, and losses (all of the foregoing, collectively, "Claims") arising directly as a result of Developer's negligence in connection with Developer's performance under this Agreement or arising directly as a result of Developer's (or Developer's contractors, subcontractors, agents, or employees) work performed in connection with the development of the Property or the Project, including without limitation, Claims involving bodily injury, death or property damage arising as a result of such negligence. Developer's indemnification obligations set forth in this Section shall not extend to Claims arising from the active negligence or willful misconduct of any City Party.

## ARTICLE 11 ASSIGNMENT

### Section 11.1 Transfers and Assignments.

A. Right to Transfer. With the written consent of City, which shall not be unreasonably withheld, conditioned, or delayed, Developer shall have the right to sell, assign or

transfer (“**Transfer**”) in whole or in part its rights, duties and obligations under this Agreement; provided, however, in no event shall the rights, duties and obligations conferred or imposed upon Developer pursuant to this Agreement be at any time so transferred except through a transfer (including a sale or ground lease) of the Property or part thereof, and all such Transfers shall be made in accordance with the requirements of this Section 11.1. City shall not withhold consent to a Transfer to a transferee that has a net worth of at least \$5 million and at least seven (7) years of demonstrated experience developing urban residential or commercial mixed-use projects of a type, size and complexity similar to the Project or portion thereof that is the subject of the proposed Transfer.

B. Permitted Transfers. The following Transfers shall be deemed “**Permitted Transfers**” that shall not require City consent or compliance with the procedures set forth in this Section: (i) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property or part thereof; (ii) Transfers to a Developer Affiliate formed to undertake development of individual phases of the Project; and (iii) the lease or sale of individual residences or commercial facilities constructed as part of the Project.

C. Partial Transfer. In the event of a conveyance of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Agreement that are applicable to the transferred portion, and retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer’s request, City shall cooperate with Developer and any proposed transferee to allocate rights, duties and obligations under this Development Agreement and the Project Approvals between the transferred Property and the retained Property.

D. Procedures. Developer shall notify City of any proposed Transfer at least thirty (30) days prior to completing such Transfer. At least twenty-one (21) days prior to the effective date of the Transfer, Developer shall deliver to City a draft of the proposed written assignment and assumption agreement in which the transferee expressly agrees to assume the rights and obligations of Developer under this Agreement being transferred. The assignment and assumption agreement shall be in substantially the form attached hereto as Exhibit E. No later than ten (10) business days after the date the Transfer becomes effective, Developer shall deliver to City a conformed copy of the fully executed and recorded assignment and assumption agreement.

E. City Consent. Consent to any proposed Transfer may be given by the City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If a proposed Transfer has not been approved in writing within thirty (30) days following City’s receipt of written request by Developer, it shall be deemed approved.

Section 11.2 Release Upon Transfer. Upon the Transfer of Developer’s rights and interests under this Agreement pursuant to this ARTICLE 11, Developer shall automatically be released from its obligations and liabilities under this Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Agreement, provided that (i) Developer has provided to City



written Notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement in accordance with Section 11.1 above. Upon any Transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and Annual Review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 13.4 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

#### **ARTICLE 12 DEFAULT; REMEDIES; TERMINATION**

Section 12.1 Breach and Default. Subject to extensions of time under Section 3.2D or by mutual consent in writing, and subject to a Mortgagee's right to cure under Section 8.3, failure by a Party to perform any material action or covenant required by this Agreement (not including any failure by Developer to perform any term or provision of any other Project Approval) within sixty (60) days following receipt of written Notice from the other Party specifying the failure shall constitute a "**Default**" under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such sixty(60) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the sixty (60) day period and thereafter diligently prosecutes the cure to completion. Any Notice of Default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Default, all facts constituting evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in Default for purposes of (i) termination of this Agreement, (ii) institution of legal proceedings with respect thereto, or (iii) issuance of any approval with respect to the Project. The waiver by either Party of any Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

Section 12.2 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to (i) waive in its sole and absolute discretion such Default as not material, (ii) institute legal proceedings pursuant to Section 12.3, and/or (iii) terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code Section 65868. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 12.7 hereof.

In the event that this Agreement is terminated pursuant to Section 7.1, or this Section 12.2 and the validity of such termination is challenged in a legal proceeding that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

### Section 12.3 Legal Actions.

A. Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the terms of this Agreement. Developer agrees that the primary remedy available to Developer in the event of any Default by City shall be specific performance, injunction or similar equitable relief and that recovery of action damages shall only be available in the event that the equitable remedies are inadequate to address the Default in question.

B. Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer's registered agent for service of process, or in such other manner as may be provided by law.

Section 12.4 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

Section 12.5 No Consequential or Special Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable for any consequential, special or punitive damages for any Default under this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement, including, but not limited to, obligations to pay actual damages, including attorneys' fees and obligations to advance monies or reimburse monies.

Section 12.6 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of the other Party, meet with designated representatives of the requesting Party promptly following its request. The Parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 12.6 shall in any way be interpreted as requiring that Developer and City reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the Parties to such meetings.

Section 12.7 Surviving Provisions. In the event this Agreement expires or is terminated, neither Party shall have any further rights or obligations hereunder, except for those

obligations of Developer set forth in Section 5.5(Prevailing Wage Requirements), Section 10.6 (Cooperation in the Event of Legal Challenge) or expressly set forth herein as surviving the expiration or termination of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement).

Section 12.8 Effects of Litigation. In the event litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Agreement, neither Party shall have any obligations whatsoever under this Agreement, except for those obligations which by their terms survive termination hereof. In the event that any payment(s) have been made by or on behalf of Developer to City pursuant to ARTICLE 5, City shall refund to Developer the monies remaining in any segregated City account, into which such payment(s) were deposited, if any, along with interest which has accrued, if any. To the extent the payment(s) made by or on behalf of Developer were not deposited, or no longer are, in the segregated City account, City shall give Developer a credit for the amount of said payment(s) as determined pursuant to this Section 12.8, along with interest, if any, that has accrued, which credit may be applied by Developer to any costs or fees imposed by City on Developer in connection with construction or development within or outside the Property. Developer shall be entitled to use all or any portion of the credit at its own discretion until such time as the credit has been depleted. Any credits due to Developer pursuant to this Section 12.8 may, at Developer's own discretion, be transferred by Developer to a third party for application by said third party to any costs or fees imposed by City on the third party in connection with construction or the development of property within City, whether or not related to the Project. This Section 12.8 shall survive the termination or expiration of this Agreement.

Section 12.9 California Claims Act. Compliance with the procedures set forth in this ARTICLE 12 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 *et seq.*) including, but not limited to, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code Section 910.

### **ARTICLE 13 MISCELLANEOUS PROVISIONS**

Section 13.1 Incorporation of Recitals, Exhibits and Introductory Paragraph. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

Section 13.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

Section 13.3 Construction. Each reference herein to this Agreement or any of the Existing Approvals or Subsequent Project Approvals shall be deemed to refer to the Agreement, Existing Approval or Subsequent Project Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or

construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (iv) "or" is not exclusive; (v) "include," "includes" and "including" are not limiting and shall be construed as if followed by the words "without limitation," and (vi) "days" means calendar days unless specifically provided otherwise.

Section 13.4 Covenants Running with the Land. Except as otherwise more specifically provided herein, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein or portion thereof, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

Section 13.5 Notices. Any notice or communication required hereunder between City and Developer ("**Notice**") must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a Notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom Notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written Notice to the other Party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the Parties at their respective addresses set forth below:

To City: City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202  
Attention: City Clerk  
Tel: (209) 937-8458

with a copy to: City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202  
Attention: Community Development Director  
Tel: (209) 937-8444

To Developer: Open Window Project, LLC  
 115 N. Sutter Street, Suite 307  
 Stockton, CA 95202  
 Attention: Zachary Cort  
 Tel: (209) 469-2678

with a copy to: Gerald J. Ramiza, Esq.  
 Burke Williams & Sorensen LLP  
 1901 Harrison Street, 9<sup>th</sup> Floor  
 Oakland, CA 94501  
 Tel: (510) 273-8780

Section 13.6 Counterparts; Entire Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. This Agreement, together with the Project Approvals and attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

Section 13.7 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after the Effective Date, the City Clerk shall record an executed copy of this Agreement in the Official Records of San Joaquin County. Thereafter, if this Agreement is terminated, modified or amended, the City Clerk shall record notice of such action in the Official Records of San Joaquin County.

Section 13.8 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any public improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Existing Approvals or Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Existing Approvals, Subsequent Project Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 13.9 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to

imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

Section 13.10 California Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Joaquin, except for actions that include claims in which the Federal District Court for the Eastern District of the State of California has original jurisdiction, in which case the Eastern District of the State of California shall be the proper venue.

Section 13.11 City Approvals and Actions. Whenever reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

Section 13.12 Estoppel Certificates. A Party may, at any time during the Term of this Agreement, and from time to time, deliver written Notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments; (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults; and (iv) any other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate, within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. The City Manager shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

Section 13.13 No Third Party Beneficiaries. City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

Section 13.14 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City and that all necessary board of directors', shareholders', partners', city councils' or other approvals have been obtained.

Section 13.15 Further Actions and Instruments. Each Party to this Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Agreement, subject to satisfaction of the conditions of this Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such

required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

Section 13.16 Attorneys' Fees. Should any legal action be brought by either Party because of any default under this Agreement or to enforce any provision of this Agreement, or to obtain a declaration of rights hereunder, the prevailing Party shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the Court. The standard of review for determining whether a default has occurred under this Agreement shall be the standard generally applicable to contractual obligations in California.

Section 13.17 Limitation on Liability. In no event shall: (i) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Agreement by Developer, or for any amount which may become due to City under the terms of this Agreement; or (ii) any member, officer, agent or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developer under the terms of this Agreement.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

**CITY:**

CITY OF STOCKTON, a California municipal corporation

By: [Signature]  
Kurt O. Wilson, City Manager  
*[signature must be notarized]*

**APPROVED AS TO FORM:**

By: [Signature]  
John Luebberke, City Attorney

**ATTEST:**

By: [Signature]  
Bonnie Paige, City Clerk



**DEVELOPER:**

OPEN WINDOW PROJECT, LLC, a California limited liability company

By: [Signature]  
Name: Zachary Cort  
Title: Manager  
*[signature must be notarized]*



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Joaquin ) ss

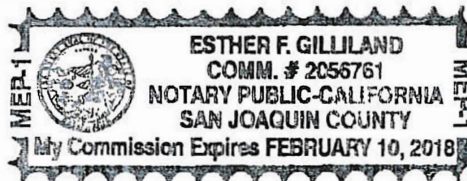
On June 29, 2016, before me, Esther F. Gilliland, Notary Public,  
(Name of Notary)

notary public, personally appeared Kurt Wilson  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same  
in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Esther F. Gilliland  
(Notary Signature)



### ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Joaquin

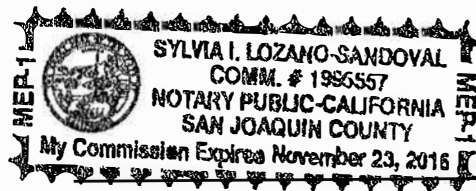
On 6/23/2016 before me, Sylvia Lozano Sandoval, Notary Public  
(insert name and title of the officer)

personally appeared Zachary R. Cort  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s); or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



**EXHIBIT A-1**  
**MAP OF DEVELOPER AND CITY PARCELS**



**QAPP Controlled**  
43 Parcels - 9,464 ac

**City owned or controlled**  
8 Parcels - 242 ac

Total number of MDP parcels: 51  
Total MDP Land Area: 11,884 ac

EXHIBIT A-2

**LEGAL DESCRIPTION OF DEVELOPER PARCELS**

All that certain real property situated in the City of Stockton, County of San Joaquin, State of California, described as follows:

510 E MINER  
532 E MINER  
544 E MINER  
225 N AMERICAN

Parcel 1: APN 139-250-06

Lots 1, 3 and the West 40 feet of Lot 5 in Block 74 East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2: APN 139-250-12

Lot 5, except the West 40 feet (Carpenter's Measurement) and all of that portion of Lot 7 lying North of the South line of Miner Channel in Block 74 East of Center Street, in the city of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 3: APN 139-250-12

Lot 15 in Block 74, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 4: APN 139-250-27

Parcel 4A:

That portion of Lots 9 and 11 in Block 74, East of Center Street in said City of Stockton according to the Official Map or Plat therefor, lying North of South Line of Miner Channel or Slough as shown on Map of H.T. Compton Jr, City Surveyor on file in the City Clerk's Office of City of Stockton, County of San Joaquin, State of California

Parcel 4B:

A portion of Lot 11 in Block 74, East of Center Street, in said City of Stockton according to the Official Map or Play thereof, commencing at the Northwest corner of said Lot; running thence South 40 feet; Thence Westerly parallel with Miner Avenue, 50 feet more or less to Bulkhead as per H.T. Compton Map; thence Northeasterly along line of Bulkhead to Miner Avenue, thence East along South line of Miner Avenue to place of beginning.

Parcel 4C:

A portion of Lots 9 and 11 in Block 74, East of Center Street in said City of Stockton, according to the Official Map or Plat thereof, described as that portion South 10 feet of the North 50 feet of each of Lots 9 and 11, lying South of line of waterway belonging to City of Stockton as established by H.T. Compton, City Surveyor in Plat Book on file in City Clerk's Office.

Parcel 4D:

The South 12 of Lot 11 and all those portions of Lot 9 lying South of Miner Channel in Block 74, East of Center Street in said City of Stockton according to the Official Map or Plat thereof.

615 E CHANNEL

Lot 4 in Block 75, East of Center Street, according to the Office Map or Plat thereof in the Office of the Recorder, San Joaquin County.

619 E CHANNEL

Lot 6 in Block 75, East of Center Street in the said City of Stockton, according to the official Map or Plat thereof in the Office of the County Recorder of San Joaquin County.

APN: 139-290-06

11 N GRANT

Lot 12, Block 8, or Tract of East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, County of San Joaquin Recorder, State of California.

Reserving unto Grantors herein all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet beneath the surface of said land, without however the right of surface entry.

Assessor's Parcel Number(s): 149-180-22

612 E MINER

Lots 1 and 3 in Block 75, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, County of San Joaquin Records.

622 E MINER

Lot Five (5) in Block Seventy-Five (75) East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof.

APN: 139-290-02

630 E WEBER  
646 E WEBER  
643 E MAIN

Lots 7, 9, 11 and 12 in Block 7, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, County of San Joaquin Records.

Assessor's Parcel Number(s):

149-180-03  
149-180-04  
149-180-09

635 E MAIN

Lot 10 in Block 7, "East of Center Street", in the City of Stockton according to the Official Map thereof.

APN: 149-180-08

836 E CHANNEL

PARCEL ONE:

Lot 7 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California according to the Official Map or Plat thereof.

APN: 139-280-04

PARCEL TWO:

Lot 9 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California according to the Official Map or Plat thereof.

APN: 139-280-05

707 E MAIN

For APN/Parcel ID(s): 149-180-24

A portion of lots 4 and 6, in Block 8, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, more particularly described as follows:

Parcel B, as shown upon map filed in Book 8 of Parcel, Maps, Page 6, San Joaquin County Records.

## 206 N SUTTER

Lots 2, 4, 6 and 8 in Block 73, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

## 201 N CALIFORNIA

For APN/Parcel ID(s): 139-250-040

Lots 10, 12 and 16 in Block 73, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

## 242 N SUTTER

APN: 139-250-01/139-250-05

## PARCEL ONE:

Lots nine (9) and eleven (11) and portion of Lots seven (7) and fifteen (15), in Block seventy-three (73) EAST OF CENTER STREET IN THE CITY OF STOCKTON according to the Official Map thereof, San Joaquin County Records, described as follows:

BEGINNING at the Northeast corner of said Block 13, being also the West line of California Street, 151.5 feet to the Southeast corner of said Lot 15; thence North 71°31' West, 52.23 feet to a point bearing 45.0 feet Westerly of said East line of Block 73 and 125.0 feet Southerly of the North line of said Block 73; thence South 78°00' West and parallel with said North Line of Block 73, 85.0 feet, thence North 12°02' West and parallel with said East line of Block 73, 80.0 feet; thence North 31°40' West, 49.3 feet to the Northwest corner of said Lot 7; thence North 78°00' East along said North line of Block 73, being also the South line of Miner Avenue, 151.6 feet to the point of beginning.

## PARCEL TWO:

Lot five (5) and portion of Lots three (3) seven (7), thirteen (13) and fifteen (15) in Block seventy three (73), EAST OF CENTER STREET, IN THE CITY OF STOCKTON, according to the Official Map thereof, San Joaquin County Records, and described as follows:

BEGINNING at the Southeast corner of said Lot 15 and ran North 71°31' West, 52.23 feet to a point being 45.0 feet Westerly of the East line of said Block 73 and 125.0 feet SOUTHERLY OF THE North line of said Block 73 thence South 78°00' West and parallel with said North line of Block 73, 85.0 feet; then North 12°02' West and parallel with said East line or Block 73, 80.00 feet; thence North 37° West, 49.93 feet to the Northwest corner of said Lot 7; thence South 18°00' West along said North line of Block 73, being also the South line of Miner Avenue 59.4 feet; thence south 12°02' East and Parallel with said East line of Block 73, 101.0 feet to the North line of Lot 13; Thence North 78°00' East along said North line of Lot 73, 50.5

feet to the South line of said Lot 73; thence North 78"0' East along said South lines of Lots 13 and 15, 196.6 feet to the point of beginning.

SUBJECT to the right to use the existing fire escape fire escape passageway over the lying East of the West line of the above described parcel in said Lot 13

PARCEL THREE:

Lot one (1) and positions of Lots three (3) and thirteen (13), in Block seventy-three (73), EAST OF CENTER STREET, IN THE CITY OF STOCKTON, according to the Official Map thereof San Joaquin County Records and described as follows:

BEGINNING at the Northwest corner of said Block 73 and ran North 78"0' East along the North line of said Block 73, being also the South line of Miner Avenue, 92.2 feet to a point being 221.0 feet Westerly of the Northwest corner of said Block 73; thence South 12"02' East and parallel with the East line of said Block 73, 101.0 feet to the North of said lot 73; thence North 78"0' East along said North line of Lot 73, 14.4 feet; thence South 12"02' East, parallel with and distant 45.0 feet Westerly of the East line of said lot 13, 50.5 feet to the South line of said Lot 73; thence South 78"0' West along said South line of Lot 73, 106.6 feet to the Southwest corner of said Lot 13; thence North 12"02' West along the West line of said Block 73, being also the East line of Sutter Street, 151.1 feet to the point of beginning.

TOGETHER with the right to use the existing fire escape passageway over and lying East of the East line of the above described parcel in said Lot 73.

104 N AMERICAN

All that certain real property being a portion of Block 68, "East of Center Street," City of Stockton, County of San Joaquin, State of California, according to the Official Map thereof, County of San Joaquin, State of California, being more particularly described as follows:

Beginning at the Northwesterly corner of said Block 68; thence along the Northerly line of said Block 68; also being the Southerly line of Channel Street (60"06' wide), North 78"23'35" East 102.30 feet; thence leaving said Northerly line the following five (5) courses: (1) South 11"39'25" East 100.00 feet; (2) North 78"20'35" East 45.00 feet; (3) South 11"39'25" East 65.00 feet; (4) North 78"20'35" East 26.00 feet and (5) South 11"39'25" East 87.66 feet to the Southerly line of said Block 68, also being the Northerly line of Weber Avenue (11"10' wide); thence along said Southerly line South 78"22'35" West 173.23 feet to the Southwesterly corner of said Block 68; thence along the Westerly line of said Block 68, also being the Easterly line of American Street (80"08' wide) North 11"40'25" West 252.65 feet to the point of beginning.

The above legal description is also referred to as "0.8031- Acre Parcel" on Certificate of Lot Line adjustment contained in Corporation Grant Deed recorded on May 5, 1994, instrument No. 94057303, San Joaquin County Records.

APN: 139-270-14



210 N AMERICAN

For APN/Parcel ID(s): 139-290-04

Lot Two (2), in Block 75, East of Center Street, in the said City of Stockton, according to the official Map or Plat thereof, San Joaquin County Records.

221 N AMERICAN

The Easterly 100 feet of Lot 16 in Block 74 East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

Expecting therefrom all oil, gas, minerals, and other hydrocarbon substances lying below a depth of 500 feet beneath the surface of said land, without the right of surface entry, is reserved in the fee from the trustees for Iroquois Tribe No. 15, improved order of Redmen, recorded November 12, 1991 as Instrument No. 991110385, San Joaquin County Records.

Assessor's Parcel Number(s): 139-250-23

525 E CHANNEL

Lot 8 and the Westerly 50 feet of Lot 16 in Block 75, East of Center Street, in the City of Stockton, County of San Joaquin, State of California as per the Official Map or Plat thereof

APN: 139-250-18

535 E CHANNEL

Lot ten (10) in Block seventy-four (74), East of Center Street, in the said City of Stockton, according Official Map or Plat thereof, San Joaquin County Records.

545 E CHANNEL

Lot 12 in Block 74 of "East of Center Street", in the said City of Stockton, according to the Official Map or Plat thereof.

APN: 139-250-21

832 E WEBER

Parcel One:

Lot 5, Block 9, "East of Center Street" in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.

Parcel Two:

Lot 7, Block 9, "East of Center Street" in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.

Assessor's Parcel Numbers(s):

149-190-03

149-190-04

843 E WEBER

For APN/Parcel ID(s): 139-280-07

PARCEL I:

Lots 10 and 12 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

PARCEL II:

The East 2/3 of Lot 14 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

800 E MAIN

APN: 149-210-01

Lots one (1), three (3) and thirteen (13) in Block eighteen (18) East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

29 N AURORA

Parcel 1:

Lot 11 in Block 9, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.

Parcel 2:

Lot sixteen (16) in Block Nine (9) East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.

**Parcel 3:**

Lot fifteen (15), and the East 26 inches of Lot thirteen (13) in Block nine (9), East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County records, and more particularly described as follows:

Beginning at the Northeast corner of said lot Thirteen (13) thence Westerly along the North line of said lot thirteen (13), 26 inches to the center of a 13 inch Brick Wall thence continuing Easterly along the South line of said Lot fifteen (15) 151.68 feet to the Southeast corner of said lot fifteen (15) thence Northerly along the East line of said lot (15) thence Northerly along the East line of said Lot fifteen (15), 50.55 feet to the Northeast corner of said Lot fifteen (15) thence Westerly along the North line of said Lot fifteen (15), 151.68 feet to the point of beginning.

**Parcel 4:**

Lots 2, 4, 6, Block 9, East of Center Street in the City of Stockton according to the Official Map or Plat thereof, San Joaquin County records.

Assessor's Parcel Numbers(s): 149-190-06; 149-190-07; 149-190-08; 149-190-09; 149-190-10; 149-190-11

**501 E MAIN**

The South 65 feet of Lot 2 and the West ½ of Lot 4 in Block 6 of East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records, pursuant to Notice of Lot Merger recorded May 3, 1985, Document No. 85030031, Official Records.

APN: 149-170-27

**11 N AURORA**

Lots 9, 11 and 15, Block 18, East of Center Street in the City of Stockton according to the Official Map or Plat thereof, San Joaquin County Records.

EXCEPTING THEREFROM the northerly 59.80 feet of said Lots 9 and 11, being measured perpendicular to and parallel with the southerly line of Main Street.

**831 E MAIN**

APN: 149-190-13

The East ½ of Lot 8 in Block 9 EAST OF CENTER, according to the Official Map or Plat thereof, San Joaquin County Records.

20 N AURORA

APN: 151-190-08

Lot 13 and the West 125 feet of Lot 14 in Block 241 of West Center Street, in the City of Stockton, as per Official Map therefor, San Joaquin County Records.

915 E MARKET

929 E MARKET

937 E MARKET

PARCEL ONE:

All of Lots 8, 15 and 16 in Block 241, EAST OF CENTER STREET, in the City of Stockton, according to the Official Map thereof.

EXCEPTING THEREFROM that portion conveyed to the San Joaquin Regional Rail Commission by Deed recorded June 29, 1998, as Document No. 98-074242.

ALSO EXCEPTING THEREFROM all minerals and mineral rights, interests, and royalties, including without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, in and under said property.

PARCEL TWO:

Lot 6 and the East 25 feet of Lot 14 in Block 241, EAST OF CENTER STREET, in the City of Stockton, according to the Official Map or Plat thereof.

PARCEL THREE:

The East 40 feet (Carpenter's Measurement) of Lot 4, in Block 241, EAST OF CENTER STREET, in the City of Stockton, according to the Official Map or Plat thereof.

TOGETHER with all of the right, title and interest of the grantors herein and to that certain right of way to be used exclusively for foot passengers on, over and along the West 10 feet 6 inches of Lot 4, Block 241, East of Center Street, to be kept and maintained forever as an open areaway as conveyed in Deed dated October 29, 1925, executed by M.D. Dentoni, a single man and M Katten, a single man to George Heighiet and Sam Tager, recorded October 31, 1925 in Vol. 126 of Official Records, page 37, San Joaquin County Records.

216 N AMERICAN

Lots 13 and 14, Block 75 of East of Center Street, in the City of Stockton, as per Official Map thereof, SAN Joaquin county Records.

APN: 139-290-03

EXHIBIT A-3**LEGAL DESCRIPTION OF CITY PARCELS**

That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

**Street Address:** 216 N. California Street, Stockton, California

Parcel 1:

The North 40 feet, 7 1/3 inches of each of lots two (2) and four (4) in block seventy-four (74) East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The South 60 feet 4 2/3 inches of each of lots two (2) and four (4); The South 60 feet 4 2/3 inches of the West 2 1/2 feet of lot six (6); all in block seventy-four (74), East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map of Plat thereof.

(ALL MEASUREMENTS UNITED STATES STANDARD MEASURE)

APN: 139-250-26

**Street Address:** 39 N. California Street, Stockton, California

Lot 11 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-12

**Street Address:** 27 N. California Street, Stockton, California

Parcel 1:

The South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13, the South one-half of Lot 13 and the North 10 feet of Lot 14 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The North one-half of Lot 13 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13.

## Parcel 3:

All of Lots 15 and 16 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 26.33 feet of the East 141.00 feet of Lot 16.

APN: 149-170-25

**Street Address:** 431 E. Main Street, Stockton, California

Lot 8 and the west one-half of Lot 10 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-08

**Street Address:** 445 E. Main Street, Stockton, California

The East one-half of Lot 10 and all of Lot 12 in Block 5, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-170-09

**Street Address:** 24 N. American Street, Stockton, California

Lots 13, 14, 15 and 16 in Block 7, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County records.

APN: 149-180-05

**Street Address:** 725 E. Main Street, Stockton, California

All of Lots 8 and 10 in Block 8 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

Also all that part of Lot 6 in Block 8 East of Center Street, being the East 46 1/2 feet thereof, more or less, bounded on the West by the centerline of a division wall running North and South between certain buildings, and being all of said Lot 6, except the part thereof conveyed by Rudolph Gnekow and wife to their sons and daughters by Deed dated February 3, 1913 and recorded in Book "A" of Deeds, Vol. 208, page 106, San Joaquin County Records.

APN: 149-180-21

**Street Address:** 25 N. Grant Street, Stockton, California

Lot 16 and the West 1/3 of Lot 15 in Block 8, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-180-17

**EXHIBIT B**  
**IMPACT FEES – CITY/MUD FEE SCHEDULE**

**Public Facility Fees**  
**Agricultural Land Mitigation**  
**(209) 937-8561**  
**FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
687-0000-223.90-18	7/1/2015	Office/High Density (per acre of net parcel area)	\$11,902.00
687-0000-223.90-18	7/1/2015	Retail/Medium Density (per acre of net parcel area)	\$11,758.00
687-0000-223.90-18	7/1/2015	Warehouse/Low Density (per acre of net parcel area)	\$10,494.00
<b>Residential</b>			
687-0000-223.90-18	7/1/2015	Single Family Units (per acre of net parcel area)	\$14,352.00
687-0000-223.90-18	7/1/2015	Multiple Family Units (per acre of net parcel area)	\$12,841.00
687-0000-223.90-18	7/1/2015	Guest Rooms (per acre of net parcel area)	\$12,841.00
<b><u>Division General Comments (Applicable to all Fees)</u></b>			
All Fee Areas - Additional 3.5% Administrative Fee			

**Public Facility Fees**  
**Air Quality**  
**(209) 937-8561**  
**FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
990-0000-344.47-00	7/1/2015	Office/High Density (per 1,000 sq. ft.)	\$329.00
990-0000-344.47-00	7/1/2015	Retail/Medium Density (per 1,000 sq. ft.)	\$689.00
990-0000-344.47-00	7/1/2015	Warehouse/Low Density (per 1,000 sq. ft.)	\$405.00
<b>Residential</b>			
990-0000-344.47-00	7/1/2015	Single Family Units (per unit)	\$187.00
990-0000-344.47-00	7/1/2015	Multiple Family Units (per unit)	\$127.00
990-0000-344.47-00	7/1/2015	Guest Rooms (per room)	\$120.00
<b><u>Division General Comments (Applicable to all Fees)</u></b>			
All Fee Areas - Additional 3.5% Administrative Fee			

**Public Facility Fees****City Office Space****(209) 937-8561****FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
930-0000-344.42-00	7/1/2015	Office/High Density (per 1,000 sq. ft.)	\$43.75
930-0000-344.42-00	7/1/2015	Retail/Medium Density (per 1,000 sq. ft.)	\$22.50
930-0000-344.42-00	7/1/2015	Warehouse/Low Density (per 1,000 sq. ft.)	\$25.50
<b>Residential - Existing City Limits</b>			
930-0000-344.42-00	7/1/2015	Single Family Units (per unit)	\$233.50
930-0000-344.42-00	7/1/2015	Multiple Family Units (per unit)	\$195.50
930-0000-344.42-00	7/1/2015	Guest Rooms (per unit)	\$49.00
<b>Residential - Greater Downtown Area</b>			
930-0000-344.42-00	7/1/2015	Single Family Units (per unit)	EXEMPT
930-0000-344.42-00	7/1/2015	Multiple Family Units (per unit)	EXEMPT
930-0000-344.42-00	7/1/2015	Guest Rooms (per room)	\$49.00
<b>Residential - Outside City Limits</b>			
930-0000-344.42-00	7/1/2015	Single Family Units (per unit)	\$467.00
930-0000-344.42-00	7/1/2015	Multiple Family Units (per room)	\$392.00
930-0000-344.42-00	7/1/2015	Guest Rooms (per room)	\$98.25

**Division General Comments: (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee



**Public Facility Fees**  
**Community Recreation Centers**  
**(209) 937-8561**  
**FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
920-0000-344.41-00	7/1/2015	Retail/Medium Density (per 1,000 sq. ft.)	\$20.25
920-0000-344.41-00	7/1/2015	Office/High Density (per 1,000 sq. ft.)	\$39.50
920-0000-344.41-00	7/1/2015	Warehouse/Low Density (per 1,000 sq. ft.)	\$23.50
<b>Residential - Existing City Limits</b>			
920-0000-344.41-00	7/1/2015	Single Family Units (per unit)	\$240.50
920-0000-344.41-00	7/1/2015	Multiple Family Units (per unit)	\$202.50
920-0000-344.41-00	7/1/2015	Guest Rooms (per room)	EXEMPT
<b>Residential - Greater Downtown Area</b>			
920-0000-344.41-00	7/1/2015	Single Family Units (per unit)	EXEMPT
920-0000-344.41-00	7/1/2015	Multiple Family Units (per unit)	EXEMPT
920-0000-344.41-00	7/1/2015	Guest Rooms (per room)	EXEMPT
<b>APPENDIX IV-B</b>			
920-0000-344.41-00	7/1/2015	Single Family Units (per unit)	\$481.00
920-0000-344.41-00	7/1/2015	Multiple Family Units (per unit)	\$405.00
920-0000-344.41-00	7/1/2015	Guest Rooms (per room)	EXEMPT

**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee

**Public Facility Fees**  
**County Facilities**  
**(209) 937-8561**  
**FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>All "Fee Areas" - Non-Residential</b>			
687-0000-223.90-15	7/1/2015	Office/High Density (per 1,000 sq. ft.)	\$390.00
687-0000-223.90-15	7/1/2015	Retail/Medium Density (per 1,000 sq. ft.)	\$440.00
687-0000-223.90-15	7/1/2015	Warehouse/Low Density (per 1,000 sq. ft.)	\$220.00
<b>All "Fee Areas" - Residential</b>			
687-0000-223.90-15	7/1/2015	Single Family Units (per unit)	\$1,926.00
687-0000-223.90-15	7/1/2015	Multiple Family Units	\$1,651.00

**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee

**Public Facility Fees****Fire Station****(209) 937-8561****FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
940-0000-344.43-00	7/1/2015	Office/High Density (per 1,000 sq. ft.)	\$118.50
940-0000-344.43-00	7/1/2015	Retail/Medium Density (per 1,000 sq. ft.)	\$61.00
940-0000-344.43-00	7/1/2015	Warehouse/Low Density (per 1,000 sq. ft.)	\$54.00
<b>Residential - Existing City Limits</b>			
940-0000-344.43-00	7/1/2015	Single Family Units (per unit)	\$781.00
940-0000-344.43-00	7/1/2015	Multiple Family Units (per unit)	\$658.00
940-0000-344.43-00	7/1/2015	Guest Rooms (per room)	\$89.00
<b>Residential - Greater Downtown Area</b>			
940-0000-344.43-00	7/1/2015	Single Family Units (per unit)	EXEMPT
940-0000-344.43-00	7/1/2015	Multiple Family Units (per unit)	EXEMPT
940-0000-344.43-00	7/1/2015	Guest Rooms (per room)	\$44.50

**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee

**Public Facility Fees****Libraries****(209) 937-8561****FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
950-0000-344.44-00	7/1/2015	Office/High Density (per 1,000 sq. ft.)	\$94.50
950-0000-344.44-00	7/1/2015	Retail/Medium Density (per 1,000 sq. ft.)	\$48.50
950-0000-344.44-00	7/1/2015	Warehouse/Low Density (per 1,000 sq. ft.)	\$53.00
<b>Residential - Existing City Limits</b>			
950-0000-344.44-00	7/1/2015	Single Family Units (per unit)	\$451.00
950-0000-344.44-00	7/1/2015	Multiple Family Units (per unit)	\$390.50
950-0000-344.44-00	7/1/2015	Guest Rooms (per room)	\$85.50
<b>Residential - Greater Downtown Area</b>			
950-0000-344.44-00	7/1/2015	Single Family Units (per unit)	EXEMPT
950-0000-344.44-00	7/1/2015	Multiple Family Units (per unit)	EXEMPT
950-0000-344.44-00	7/1/2015	Guest Rooms (per room)	\$85.50
<b>Residential - Outside City Limits</b>			
950-0000-344.44-00	7/1/2015	Single Family Units (per unit)	\$902.00
950-0000-344.44-00	7/1/2015	Multiple Family Units (per unit)	\$761.00
950-0000-334.44-00	7/1/2015	Guest Rooms (per room)	\$171.00

**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee

**Public Facility Fees****Parkland****(209) 937-8349****FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
970-0000-344.46-00	7/1/2015	Office/High Density	EXEMPT
970-0000-344.46-00	7/1/2015	Retail/Medium Density	EXEMPT
970-0000-344.46-00	7/1/2015	Warehouse/Low Density	EXEMPT
<b>Residential</b>			
970-0000-344.46-00	7/1/2015	Single Family Units (per unit)	\$2,798.00
970-0000-344.46-00	7/1/2015	Multiple Family Units (per unit)	\$1,712.00
970-0000-344.46-00	7/1/2015	Guest Rooms	EXEMPT

**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee

**Public Facility Fees  
Police Station Expansion  
(209) 937-8561**

**FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
960-0000-344.45-00	7/1/2015	Office/High Density (per 1,000 sq. ft.)	\$105.50
960-0000-344.45-00	7/1/2015	Retail/Medium Density (per 1,000 sq. ft.)	\$54.00
960-0000-344.45-00	7/1/2015	Warehouse/Low Density (per 1,000 sq. ft.)	\$62.00
<b>Residential - Existing City Limits</b>			
960-0000-344.45-00	7/1/2015	Single Family Units (per unit)	\$591.00
960-0000-344.45-00	7/1/2015	Multiple Family Units (per unit)	\$497.00
960-0000-344.45-00	7/1/2015	Guest Rooms (per room)	\$99.50
<b>Residential - Greater Downtown Area</b>			
960-0000-344.45-00	7/1/2015	Single Family Units (per unit)	EXEMPT
960-0000-344.45-00	7/1/2015	Multiple Family Units (per unit)	EXEMPT
960-0000-344.45-00	7/1/2015	Guest Rooms (per room)	\$99.50
<u>Division General Comments (Applicable to all Fees)</u>			
All Fee Areas - Additional 3.5% Administrative Fee			

**Public Facility Fees  
Regional Transportation Impact Fee (RTIF)  
(209) 937-8349**

**FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
917-0000-344.11-08	7/1/2015	Office/High Density/Guest Rooms (per 1,000 sq. ft.)	\$1,580.00
917-0000-344.11-08	7/1/2015	Retail/Medium Density (per 1,000 sq. ft.)	\$1,250.00
917-0000-344.11-08	7/1/2015	Commercial/Industrial (per 1,000 sq. ft.)	\$950.00
917-0000-344.11-08	7/1/2015	High Cube Warehouse (per 1,000 sq. ft.)	\$400.00
<b>Residential</b>			
917-0000-344.11-08	7/1/2015	Single Family Units (per unit)	\$3,141.34
917-0000-344.11-08	7/1/2015	Multiple Family Units (per unit)	\$1,884.80
<u>Division General Comments (Applicable to all Fees)</u>			
All Fee Areas - Additional 3.5% Administrative Fee			

**Public Facility Fees****Street Improvements****(209) 937-8349****FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
910-0000-344.11-00	7/1/2015	Office/High Density, per 1,000 square feet	\$2,412.00
910-0000-344.11-00	7/1/2015	Retail/Medium Density, per 1,000 square feet	\$3,177.00
910-0000-344.11-00	7/1/2015	Warehouse/Low Density, per 1,000 square feet	\$931.50
<b>Residential - Existing City Limits</b>			
910-0000-344.11-00	7/1/2015	Single Family Units (per unit)	\$6,613.00
910-0000-344.11-00	7/1/2015	Multiple Family Units (per unit)	\$4,828.00
910-0000-344.11-00	7/1/2015	Guest Rooms (per room)	\$5,157.50
<b>Residential - Greater Downtown Area</b>			
910-0000-344.11-00	7/1/2015	Single Family Units (per unit)	EXEMPT
910-0000-344.11-00	7/1/2015	Multiple Family Units (per unit)	EXEMPT
910-0000-344.11-00	7/1/2015	Guest Rooms (per room)	\$5,157.50
<b>Residential - Outside City Limits</b>			
910-0000-344.11-00	7/1/2015	Single Family Units (per unit)	\$13,226.00
910-0000-344.11-00	7/1/2015	Multiple Family Units (per unit)	\$9,656.00
910-0000-344.11-00	7/1/2015	Guest Rooms (per room)	\$10,315.00
<b><u>Division General Comments (Applicable to all Fees)</u></b>			
All Fee Areas - Additional 3.5% Administrative Fee			

**Public Facility Fees****Street Trees****(209) 937-8561****FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
978-0000-344.15-00	7/1/2015	Tree without root barrier, per tree	\$140.00
979-0000-344.15-00	7/1/2015	Tree wells with root barrier, per tree	\$195.00
<b><u>Division General Comments (Applicable to all Fees)</u></b>			
All Fee Areas - Additional 3.5% Administrative Fee			

**Public Facility Fees**  
**Surface Water**  
**(209) 937-8436**  
**FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Non-Residential</b>			
687-0000-223.90-11	4/1/2016	Office/High density (per sq. ft. floor areas / 0.50)	\$0.431
687-0000-223.90-11	4/1/2016	Retail/medium density (per sq. ft. floor areas / 0.30)	\$0.259
587-0000-223.90-11	4/1/2016	Warehouse/Low density (per sq. ft. floor areas / 0.50)	\$0.209
<b>Residential</b>			
587-0000-223.90-11	4/1/2016	Single Family Unit (per unit)	\$4,196.00
687-0000-223.90-11	4/1/2016	Multiple Family Units - First Unit	\$4,196.00
587-0000-223.90-11	4/1/2016	Multiple Family Units - Each subsequent unit	\$1,260.00
587-0000-223.90-11	4/1/2016	Guest Rooms	\$985.00
687-0000-223.90-11	4/1/2016	Guest Rooms - Each subsequent guest room	.0248

**Division General Comments (Applicable to all Fees)**

Surface Water Public Facility Fees are adjusted every April 1st per Resolution #95-0302 & #02-0231 to cover transfer to Stockton East Water District. Please contact the Municipal Utilities Department for updated Fee information at (209) 937-8753.

## Public Facility Fees

### Traffic Signals

(209) 937-8349

#### FY 2015-16 Adopted Fee Schedule

Account #	Effective Date	Description	Amount
	7/1/2015	Single Family Detached (PURD SFT) per D.U. Units - 10 Trip Ends per Unit per D.U. Units - 10 Trip Ends per unit	\$110.00
	7/1/2015	Condominium (PURD SFA) per D.U. Units - 8.6 Trip Ends per unit	\$94.00
	7/1/2015	Mobile Home per D.U. Units - 5.4 Trip Ends per unit	\$59.00
	7/1/2015	Apartment per D.U. Units - 6.1 Trip Ends per unit	\$66.50
	7/1/2015	Retirement Village per D.U. Units - 3.3 Trip Ends per unit	\$36.00
	7/1/2015	Hotel per Room Units - 11 Trip Ends per unit	\$122.00
	7/1/2015	Motel per Room Units - 9.6 Trip Ends per unit	\$106.00
	7/1/2015	Daycare/Preschool per Student Units - 5 Trip Ends per unit	\$55.00
	7/1/2015	Daycare/Preschool per 1,000 sq. feet Units - 79 Trip Ends per unit	\$866.00
	7/1/2015	Elementary--Intermediate School per Student Units - 0.5 Trip Ends per unit	\$5.50
	7/1/2015	High School per Student Units - 1.2 Trip Ends per unit	\$13.25
	7/1/2015	Junior College--Community College per Student Units - 1.6 Trip Ends per unit	\$17.75
	7/1/2015	University per Student Units - 2.4 Trip Ends per unit	\$26.50
	7/1/2015	Church & Accessory Use per 1,000 sq. feet Units - 7.7 Trip Ends per unit	\$84.50
	7/1/2015	Industrial--Warehouse--Manufacturer per 1,000 sq. feet Units - 7.6 Trip Ends per unit	\$83.25
	7/1/2015	Industrial--Warehouse--Manufacturer per Acre Units - 80.8 Trip Ends per unit	\$895.00
	7/1/2015	Industrial Service per 1,000 sq. feet Units - 20.26 Trip Ends per unit	\$223.00
	7/1/2015	Truck Terminal--Distribution Center per 1,000 sq. feet Units - 9.86 Trip Ends per unit	\$108.00
	7/1/2015	Mini-/Self Storage per 1,000 sq. feet Units - 2.8 Trip Ends per unit	\$30.75
	7/1/2015	Lumber Yard per 2,000 sq. feet Units - 34.5 Trip Ends per unit	\$379.00
	7/1/2015	Lumber Yard w/open storage/sales per Acre Units - 148 Trip Ends per unit	\$1,622.00
	7/1/2015	Home Imp. Center per 1,000 sq. feet Units - 64.6 Trip Ends per unit	\$709.00
	7/1/2015	Shopping Center by size (sq. ft.) - Less than 50,000 per 1,000 sq. feet Units - 116 Trip Ends per unit	\$1,271.00
	7/1/2015	Shopping Center by size (sq. ft.) - 50,000-99,999 per 1,000 sq. feet Units - 79.1 Trip Ends per unit	\$866.00
	7/1/2015	Shopping Center by size (sq. ft.) - 100,000-199,999 per 1,000 sq. feet Units - 60.4 Trip Ends per unit	\$662.00
	7/1/2015	Shopping Center by size (sq. ft.) - 200,000-299,999 per 1,000 sq. feet Units - 49.9 Trip Ends per unit	\$547.00
	7/1/2015	Shopping Center by size (sq. ft.) - 300,000-399,999 per 1,000 sq. feet Units - 44.4 Trip Ends per unit	\$486.00
	7/1/2015	Shopping Center by size (sq. ft.) - 400,000-499,999 per 1,000 sq. feet Units - 41.6 Trip Ends per unit	\$456.00

## Public Facility Fees

### Traffic Signals

(209) 937-8349

#### FY 2015-16 Adopted Fee Schedule

Account #	Effective Date	Description	Amount
	7/1/2015	Shopping Center by size (sq. ft.) - 500,000-999,999 per 1,000 sq. feet Units - 35.5 Trip Ends per unit	\$389.00
	7/1/2015	Shopping Center by size (sq. ft.) - 1,000,000-1,250,000 per 1,000 sq. feet Units - 31.5 Trip Ends per unit	\$345.00
	7/1/2015	Boat Launching Ramp per Space Units - 3 Trip Ends per unit	\$33.50
	7/1/2015	Free Standing Retail per 1,000 sq. feet Units - 73.7 Trip Ends per unit	\$808.00
	7/1/2015	Ambulance Dispatch per 1,000 sq. feet Units - 73.7 Trip Ends per unit	\$808.00
	7/1/2015	Service Station--more than 2 pumps or 4 nozzles per Site Units - 748 Trip Ends per unit	\$8,193.00
	7/1/2015	Truck Stop per Site Units - 825 Trip Ends per unit	\$9,036.00
	7/1/2015	Used Car (No service) per Acre Units - 55 Trip Ends per unit	\$603.00
	7/1/2015	New Car/New Boat Dealer per 1,000 sq. feet Units - 44.3 Trip Ends per unit	\$485.00
	7/1/2015	Auto Center Dealership per 1,000 sq. feet Units - 31.25 Trip Ends per unit	\$342.00
	7/1/2015	General Auto Repair/Body Shop per 1,000 sq. feet Units - 27.2 Trip Ends per unit	\$298.00
	7/1/2015	Self Service Car Wash per Stall Units - 52 Trip Ends per unit	\$571.00
	7/1/2015	Automatic Car Wash per Site Units - 900 Trip Ends per unit	\$9,659.00
	7/1/2015	Auto Supply per 1,000 sq. feet Units - 89 Trip Ends per unit	\$976.00
	7/1/2015	Drug Store/Pharmacy per 1,000 sq. feet Units - 43.9 Trip Ends per unit	\$482.00
	7/1/2015	Discount Store per 1,000 sq. feet Units - 71.16 Trip Ends per unit	\$790.00
	7/1/2015	Supermarket per 1,000 sq. feet Units - 125.5 Trip Ends per unit	\$1,373.00
	7/1/2015	Convenience Market per 1,000 sq. feet Units - 574.48 Trip Ends per unit	\$6,293.00
	7/1/2015	Convenience Markets dispensing fuel--maximum of 2 pumps/4 nozzles per 1,000 sq. feet Units - 887.06 Trip Ends per unit	\$9,718.00
	7/1/2015	Clothing Store per 1,000 sq. feet Units - 31.3 Trip Ends per unit	\$343.00
	7/1/2015	Paint/Hardware Store per 1,000 sq. feet Units - 51.3 Trip Ends per unit	\$562.00
	7/1/2015	Variety Store per 1,000 sq. feet Units - 14.4 Trip Ends per unit	\$157.00
	7/1/2015	Video Rental Store per 1,000 sq. feet Units - 57.3 Trip Ends per unit	\$628.00
	7/1/2015	Furniture/Appliance Store per 1,000 sq. feet Units - 4.35 Trip Ends per unit	\$47.50
	7/1/2015	Department Store per 1,000 sq. feet Units - 35.8 Trip Ends per unit	\$391.00
	7/1/2015	Hair Salon/Dog Grooming per 1,000 sq. feet Units - 25.5 Trip Ends per unit	\$279.00
	7/1/2015	Bar/Tavern per 1,000 sq. feet Units - 40 Trip Ends per unit	\$438.00
	7/1/2015	Laundromat/Dry Cleaners per 1,000 sq. feet Units - 50 Trip Ends per unit	\$548.00
	7/1/2015	Bakery/Craft Store/Yogurt Shop per 1,000 sq. feet Units - 43.9 Trip Ends per unit	\$482.00
	7/1/2015	Carpet-Floor/Interior Decorator per 1,000 sq. feet Units - 5.6 Trip Ends per unit	\$61.00



**Public Facility Fees****Traffic Signals****(209) 937-8349****FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
	7/1/2015	Bank per 1,000 sq. feet Units - 189.95 Trip Ends per unit	\$2,081.00
	7/1/2015	Banks with Drive-up Facilities per 1,000 sq. feet Units - 290 Trip Ends per unit	\$3,178.00
	7/1/2015	Free Standing Automatic Teller per Unit Units - 150 Trip Ends per unit	\$1,753.00
	7/1/2015	Savings & Loan/Mortgage Co. per 1,000 sq. feet Units - 60.4 Trip Ends per unit	\$662.00
	7/1/2015	Restaurant-Quality per 1,000 sq. feet Units - 95.52 Trip Ends per unit	\$1,046.00
	7/1/2015	Restaurant-Dinner House per 1,000 sq. feet Units - 56.3 Trip Ends per unit	\$617.00
	7/1/2015	Restaurant-High Turnover/Sit Down per 1,000 sq. feet Units - 164.4 Trip Ends per unit	\$1,801.00
	7/1/2015	Restaurant-Fast Food per 1,000 sq. feet Units - 777.29 Trip Ends per unit	\$8,514.00
	7/1/2015	Restaurant-Fast Food with Drive-thru per 1,000 sq. feet Units - 680 Trip Ends per unit	\$7,450.00
	7/1/2015	Library per 1,000 sq. feet Units - 45.5 Trip Ends per unit	\$497.00
	7/1/2015	Hospital per bed Units - 12.2 Trip Ends per unit	\$135.00
	7/1/2015	Hospital per 1,000 sq. feet Units - 16.9 Trip Ends per unit	\$186.00
	7/1/2015	Nursing Home per bed Units - 2.7 Trip Ends per unit	\$30.00
	7/1/2015	Clinic/Weight Loss/Aerobics/Karate/Dance per 1,000 sq. feet Units - 23.8 Trip Ends per unit	\$262.00
	7/1/2015	Medical Office per 1,000 sq. feet Units - 54.5 Trip Ends per unit	\$597.00
	7/1/2015	General/Medical office per 1,000 sq. feet Units - 36.9 Trip Ends per unit	\$405.00
	7/1/2015	General Office (in square feet) - Less than 100,000 per 1,000 sq. feet Units - 17.70 Trip Ends per unit	\$195.00
	7/1/2015	General Office (in square feet) - Over 100,000 per 1,000 sq. feet Units - 14.30 Trip Ends per unit	\$156.00
	7/1/2015	Office Park per 1,000 sq. feet Units - 11.4 Trip Ends per unit	\$125.00
	7/1/2015	Government Offices per 1,000 sq. feet Units - 68.9 Trip Ends per unit	\$755.00
	7/1/2015	Public Clubhouse/Meeting Rooms, Halls per 1,000 sq. feet Units - 19 Trip Ends per unit	\$208.00
	7/1/2015	Recreation Center (Private Dev.) per 1,000 sq. feet Units - 30 Trip Ends per unit	\$328.00
	7/1/2015	Family Recreation Center-Billiards, etc. per 1,000 sq. feet Units - 60.4 Trip Ends per unit	\$662.00
	7/1/2015	Batting Cages per Cage Units - 6 Trip Ends per unit	\$65.50
	7/1/2015	Tennis/Racquetball Club per Court Units - 30 Trip Ends per unit	\$328.00

**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee

EXHIBIT C

**INTENTIONALLY OMITTED**

**EXHIBIT D**  
**CONNECTION FEES – CITY FEE SCHEDULE**

**Municipal Utilities Department**

**Water**

**(209) 937-8706**

**FY 2015-16 Adopted Fee Schedule**

<i>Account #</i>	<i>Effective Date</i>	<i>Description</i>	<i>Amount</i>
<b>Residential Connections</b>			
424-0000-344.20-00	7/1/2015	Single Family	\$2,170.01
424-0000-344.20-00	7/1/2015	Multi-Family - First meter	\$2,170.01
424-0000-344.20-00	7/1/2015	Each Additional Unit(s) - (Multi-Family)	\$1,750.84
<b>Non-Residential Connections</b>			
424-0000-344.20-00	7/1/2015	5/8 & 3/4 inch meter	\$2,170.01
424-0000-344.20-00	7/1/2015	1 inch meter	\$4,087.84
424-0000-344.20-00	7/1/2015	1 1/2 inch meter	\$9,241.74
424-0000-344.20-00	7/1/2015	2 inch meter	\$13,065.02
424-0000-344.20-00	7/1/2015	3 inch meter	\$27,747.57
424-0000-344.20-00	7/1/2015	4 inch meter	\$46,202.64
424-0000-344.20-00	7/1/2015	6 inch meter	\$100,448.93
424-0000-344.20-00	7/1/2015	10 inch meter (1)	See Formula
424-0000-344.20-00	7/1/2015	12 inch meter (2)	See Formula
<b>Delta Water Supply Project Surface Water Supply Fee</b>			
425-0000-344.20-00	7/1/2015	3/4 inch meter	\$4,946.00
425-0000-344.20-00	7/1/2015	1 inch meter	\$8,259.82
425-0000-344.20-00	7/1/2015	1 1/2 inch meter	\$19,784.00
425-0000-344.20-00	7/1/2015	2 inch meter	\$26,362.18
425-0000-344.20-00	7/1/2015	3 inch meter	\$52,773.82
425-0000-344.20-00	7/1/2015	4 inch meter	\$82,449.82
425-0000-344.20-00	7/1/2015	6 inch meter	\$164,850.18
425-0000-344.20-00	7/1/2015	8 inch meter	\$263,770.18
425-0000-344.20-00	7/1/2015	10 inch meter (5)	See Formula
425-0000-344.20-00	7/1/2015	12 inch meter (6)	See Formula

EXHIBIT E

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

*Exempt from Recording Fee per  
Government Code Section 27383*

*Space Above This Line for Recorder's Use Only*

**ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER  
DEVELOPMENT AGREEMENT**

This Assignment of Rights and Obligations Under Development Agreement (this "Assignment") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between \_\_\_\_\_, a ("Assignor") and \_\_\_\_\_, a ("Assignee"). Assignor and Assignee are collectively referred to herein as the "Parties."

RECITALS

A. Assignor and the City of Stockton, a California municipal corporation ("City") have entered into that certain Development Agreement dated as of \_\_\_\_\_, 2016 ("DA") which was recorded in the Official Records of San Joaquin County on \_\_\_\_\_, 2016 as Instrument No. \_\_\_\_\_.

B. Assignor [has requested approval from the City of the assignment to Assignee described herein pursuant to Section 11.1A of the DA] [has the right to make the assignment to Assignee under Section 11.1B of the DA.]

C. [City has consented to the assignment described herein pursuant to Section 11.1A of the DA.] [Assignor has provided the City with documentation establishing that the assignment is appropriate pursuant to 11.1 of the DA because \_\_\_\_\_.]

AGREEMENTS

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignment and Assumption of Interest. Assignor hereby transfers, assigns and conveys to Assignee, all of Assignor's right, title and interest in and to, and all obligations, duties, responsibilities, conditions and restrictions under, the DA (the "**Rights and Obligations**"). Assignee, for itself and its successors and assigns, hereby accepts the foregoing assignment, assumes all such Rights and Obligations, and expressly agrees for the benefit of City, to pay, perform and discharge all obligations of Assignor under the DA and to comply with all covenants and conditions of Assignor arising from or under the DA.

2. Governing Law; Venue. This Assignment shall be interpreted and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Assignment shall be filed and litigated exclusively in the Superior Court of San Joaquin County, California or in the Federal District Court for the Eastern District of California.

3. Entire Agreement/Amendment. This Assignment constitutes the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all prior written and oral agreements with respect to the matters covered by this Assignment. This Assignment may not be amended except by an instrument in writing signed by each of the Parties and consented to in writing by City.

4. Further Assurances. Each Party shall execute and deliver such other certificates, agreements and documents and take such other actions as may be reasonably required to consummate or implement the transactions contemplated by this Assignment and the DA.

5. Benefit and Liability. Subject to the restrictions on transfer set forth in the DA, this Assignment and all of the terms, covenants, and conditions hereof shall extend to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

6. Rights of City. All rights of City under the DA and all obligations to City under the DA which were enforceable by City against Assignor prior to the Effective Date of this Assignment shall be fully enforceable by City against Assignee from and after the Effective Date of this Assignment.

7. Rights of Assignee. All rights of Assignor and obligations to Assignor under the DA which were enforceable by Assignor against City prior to the Effective Date of this Assignment shall be fully enforceable by Assignee against City from and after the Effective Date of this Assignment.

8. Release. As of the Effective Date, Assignor hereby relinquishes all rights under the DA, and all obligations of Assignor under the DA shall be terminated as to, and shall have no more force or effect with respect to, Assignor.

9. Attorneys' Fees. In the event of any litigation pertaining to this Assignment, the losing party shall pay the prevailing party's litigation costs and expenses, including without limitation reasonable attorneys' fees.

10. City Consent; City is a Third-Party Beneficiary. City's countersignature below is for the limited purposes of indicating consent to the assignment and assumption set forth in this

Assignment (if necessary under the DA), and for clarifying that there is privity of contract between City and Assignee with respect to the DA. The City is an intended third-party beneficiary of this Assignment, and has the right, but not the obligation, to enforce the provisions hereof.

11. Recordation. Assignor shall cause this Assignment to be recorded in the Official Records of San Joaquin County, and shall promptly provide conformed copies of the recorded Assignment to City and Assignee.

12. Address for Notices. Assignee's address for notices, demands and communications under Section 13.5 of the DA is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

13. Captions; Interpretation. The section headings used herein are solely for convenience and shall not be used to interpret this Assignment. The Parties acknowledge that this Assignment is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both have participated in the negotiation and drafting of this Assignment, this Assignment shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

14. Severability. If any term, provision, condition or covenant of this Assignment or its application to any party or circumstances shall be held by a court of competent jurisdiction, to any extent, invalid or unenforceable, the remainder of this Assignment, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law unless the rights and obligations of the Parties have been materially altered or abridged thereby.

15. Counterparts. This Assignment may be executed in counterparts, each of which shall, irrespective of the date of its execution and delivery, be deemed an original, and the counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF Assignor and Assignee have executed this Assignment as of the date first set forth above.

**ASSIGNOR:**

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_ **FORM – DO NOT SIGN**  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_, a  
\_\_\_\_\_

By:           **FORM – DO NOT SIGN**            
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[NOTE: The presence of the signature blocks below in this form shall not be deemed to require the consent of the City to any assignment that does not otherwise require the consent of City under the DA.]

City of Stockton, a California municipal corporation,  
hereby consents to the assignment and assumption  
described in the foregoing Assignment and Assumption  
Agreement.

**CITY:**

**CITY OF STOCKTON**, a  
California municipal corporation

By:           **FORM – DO NOT SIGN**            
\_\_\_\_\_, City Manager

**ATTEST:**

\_\_\_\_\_, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_, City Attorney





A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 ) ss  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(Name of Notary)

notary public, personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Notary Signature)

EXHIBIT F**DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE PROGRAM**

City of Stockton  
 ECONOMIC DEVELOPMENT  
 DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE PROGRAM

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**Goals and Objectives**

The purpose of the Downtown Infrastructure Infill Incentive Program is to serve as an additional tool in the City's economic development efforts to revitalize Downtown Stockton, generate new revenue, attract new business, and create additional jobs. The program provides financial incentives to eligible parties that are looking to develop new market-rate residential or mixed use projects in Downtown Stockton. The project must align with City Council goals, adopted Economic Development Strategic Plan (February 2015) and/or Urban Land Institute report (February 2012) and must help to meet infill development objectives for Downtown Stockton.

**Program Guidelines**

The Downtown Infrastructure Infill Incentive Program will be used to attract and support market-rate residential, commercial, and mixed use projects in Downtown Stockton. In order to qualify, a project must meet the following guidelines:

**1. Program boundaries**

Center Street to the west, Park Street to the north, ACE Rail/UPPR to the east, and Washington Street to the south (see Exhibit A - Program Boundary Map).

**2. Eligible Improvements**

The Downtown Infrastructure Infill Incentive Program would fund public off-site infrastructure associated with eligible Downtown infill projects. Qualifying improvements include, but not are limited to:

- Sewer
- Water
- Storm Drain
- Street Improvements, including crosswalks, bike lanes, striping, and medians
- Public Signage
- Traffic Signals
- Street Lights
- Curb, Gutter, Sidewalk
- Landscaping
- Other public improvements such as benches, trash receptacles, parklets, planters, and bike racks

**3. Eligible Projects**

In order to qualify for public infrastructure funding, a project must be located within the program boundaries identified above and consist of a minimum of 35 new market-rate residential units and/or a minimum of 30,000 s.f. of new, or newly renovated, retail or commercial space. In addition, the applicant must make a capital investment of a minimum

of \$500,000 and the public improvements eligible for reimbursement must equal a minimum of \$100,000 in order to qualify.

#### **4. Application Process and Funding**

A request for funding must be submitted to the Economic Development Department for review. Upon project approval by the City Manager, an Infill Infrastructure Reimbursement Agreement will be drafted between the City and applicant for Council consideration. The Reimbursement Agreement will detail the public improvements being constructed, cost, source of funds, and terms of the reimbursement.

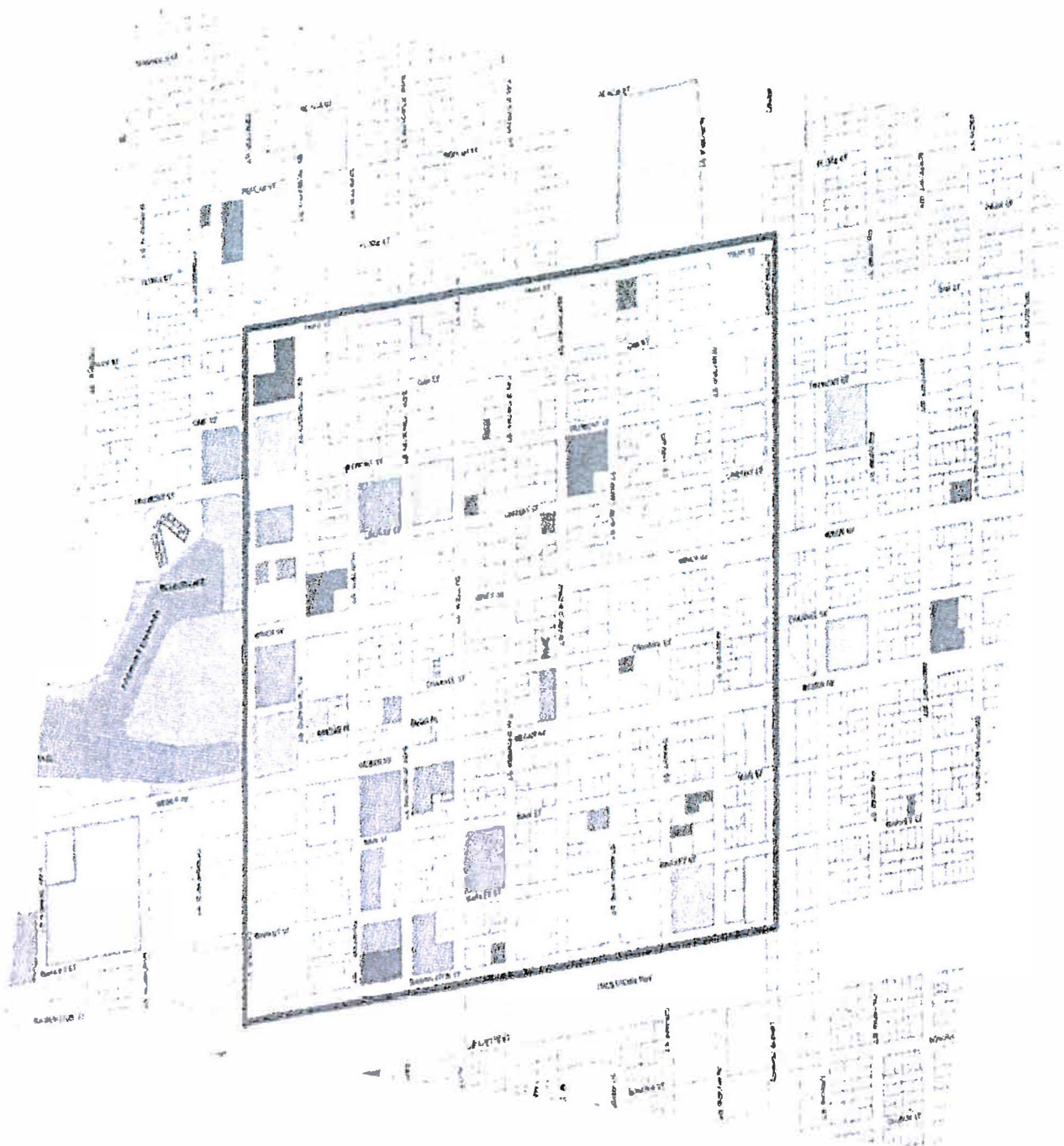
The City will reimburse the applicant within 6 months of completion of public improvements that are eligible and included within the executed Reimbursement Agreement of up to \$900,000 annually. If improvements exceed the \$900,000 annual cap, reimbursements will occur in subsequent years. The City Council, at its sole discretion, may amend or cancel the program at any time.

The Downtown Infrastructure Infill Incentive Program will maintain an annual cap of \$900,000 and potentially be funded through various sources including, but not limited to, Successor Agency tax increment ("waterfall"), sales tax sharing agreements, Community Development Block Grant (CDBG) funds, Enhanced Infrastructure Finance Districts, Municipal Utilities capital improvement funds, gas tax revenues, and potential grant proceeds. The City will fund a total of \$9 million during the life of the program, which will be in effect for a period of 10 years from the date of approval, unless extended by the City Council.

#### **5. Council Review**

All Infrastructure Reimbursement Agreements will be presented to the City Council for review and consideration based on the guidelines set forth above.

EXHIBIT A  
Downtown Infrastructure Infill Incentive  
Program Boundary Map



**EXHIBIT G**  
**ASSESSMENTS**

Community Facilities District No. 2001-1 (Downtown Parking); and  
Downtown Stockton Management District (Downtown Stockton Alliance)

EXHIBIT H**DOWNTOWN FINANCIAL INCENTIVE PROGRAM**

CITY OF STOCKTON

**DOWNTOWN FINANCIAL INCENTIVE PROGRAM (DFIP):  
GUIDELINES AND PROCEDURES**

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**1. PURPOSE**

To eliminate blight and/or blighting influences and to encourage economic reuse of structures within Downtown Stockton that have been vacant for a period of six months or longer. The City of Stockton will grant to the owner of eligible structure a sum equal to certain City imposed fees required to be paid in order to secure a building permit for tenant improvements.

**2. ADMINISTRATION**

The DFIP is administered by the Economic Development Department. The City, with the assistance of the Downtown Stockton Alliance, will verify vacancy dates and determine eligibility. The City's determination is final. Owner shall complete an application and provide all information necessary or requested to permit City to determine and/or confirm vacancy dates. City staff will verify that the proposed used is permitted, conduct an historic review of the property, and ensure that the applicant possesses a City of Stockton business license.

**3. ELIGIBILITY****a. Program Boundary**

- i. Structures located within the Downtown Stockton Management District (aka Downtown Stockton Alliance) are eligible to apply. A map of the program boundary is attached as Exhibit A.

**b. Eligible Structures**

- i. Residential or commercial buildings
- ii. Structures that have continuously been vacant for six (6) month or longer
- iii. Structures or portion(s) thereof located within the program boundary capable of being rehabilitated pursuant to applicable building codes.

**c. Eligible Uses**

- i. Any use permitted within the zoning applicable to the building/parcel, including uses requiring a conditional use permit.

**4. ELIGIBLE FEES**

Certain City imposed fees are eligible for payment as shown in Exhibit B. Fees are paid at the time of building permit issuance. Owner must secure verification of eligibility prior to the issuance of the building permit. Only fees applicable to tenant improvements/rehabilitation are eligible. Fees associated with building expansions or new construction are not eligible for payment under this program.

5. APPLICATION

Applicant must submit a completed Downtown Financial Incentive application, signed by the property owner and Downtown Stockton Alliance, to the City of Stockton's Economic Development Department. City staff will review and determine eligibility. The property owner must agree to the following:

- a. Keep the building free of graffiti and blight
- b. Complete tenant improvements within 180 days of permit issuance
- c. Possess a current City of Stockton Business License

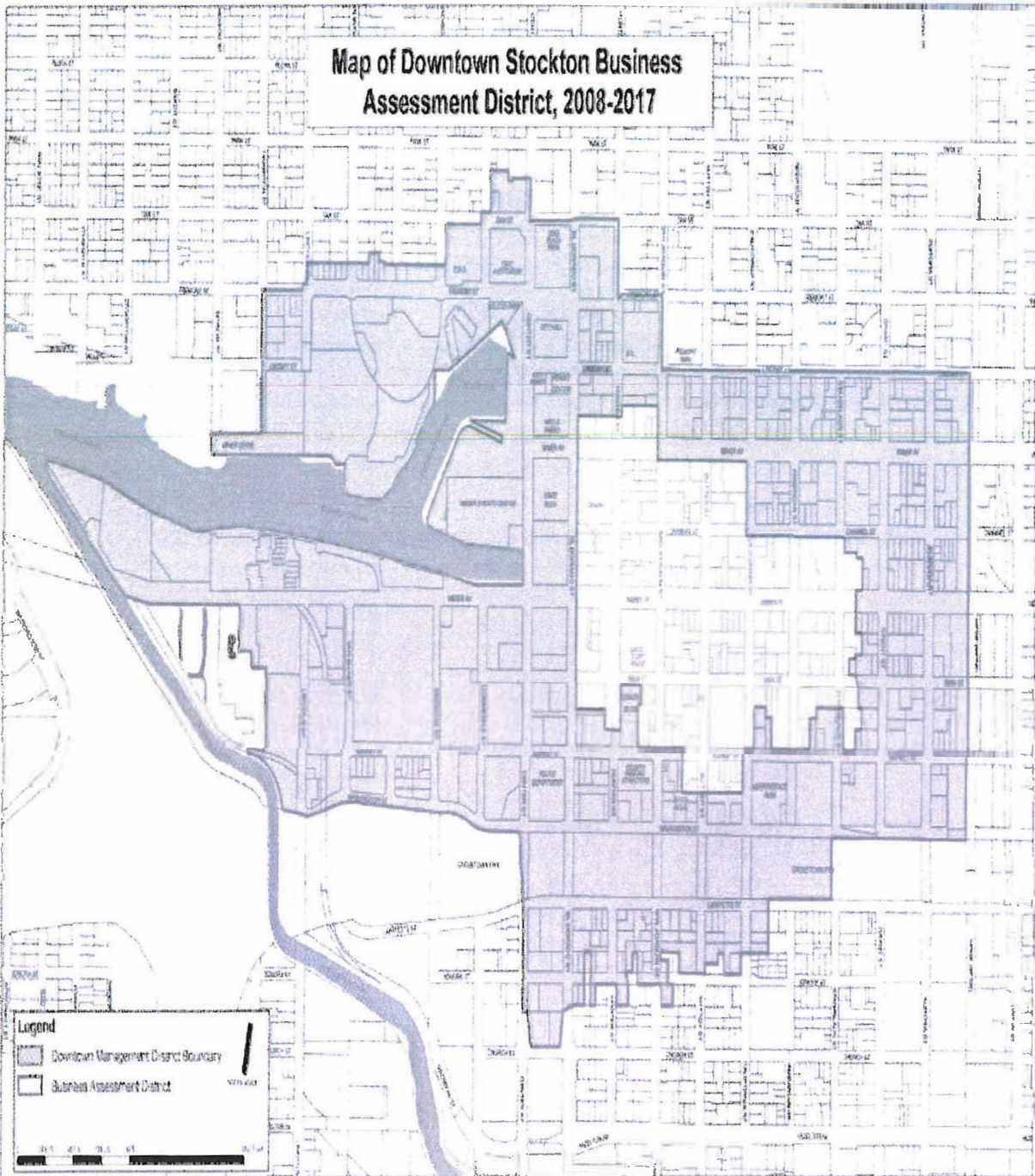
The Economic Development Department will notify the Community Development Department once an application has been approved.

6. EFFECTIVE DATES

Program was originally adopted by the Stockton City Council on December 14, 1999 by Resolution No. 99-0583. Continuation of the program is dependent upon availability of funding.

# EXHIBIT A

## Program Boundary





## **EXHIBIT B**

### **Eligible Fees**

#### **PUBLIC FACILITIES FEES**

- City Office Space
- Fire Stations
- Libraries
- Police Station
- Street Improvements
- Surface Water
- Air Quality
- Conservation/Open Space
- Administration

#### **SEWER CONNECTION FEES**

#### **SEWER ADMINISTRATION FEE**

#### **BUILDING FEES**

- Plan Check
- Building Permits
- Strong Motion Instrument Program (SMIP)
- General Plan Maintenance and Implementation
- Miscellaneous Fees: Permit Tracking, Land Update, Microfilm, Green Building, Permit Issuance

#### **FIRE PROTECTION FEES**

- Plan Check: sprinkler systems fire alarm systems, hood and duct systems, others as deemed appropriate
- Permit: place of assembly

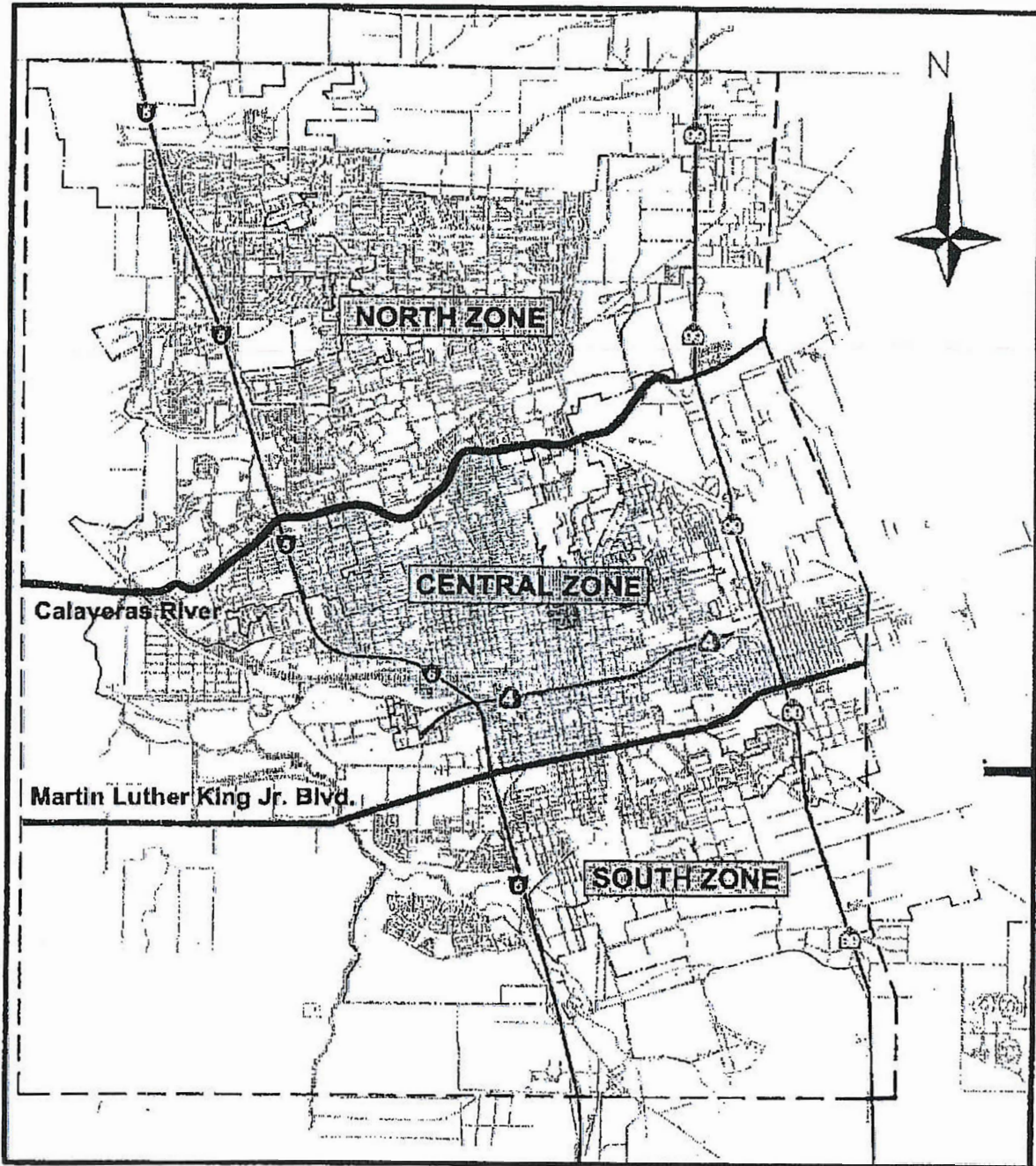
#### **PUBLIC WORKS FEES**

- Plan Check
- Permit
- Street Light "in lieu of"
- Flood Control
- Public Works Commercial Construction

EXHIBIT I

**PUBLIC FACILITY FEE PROGRAM INCENTIVE GUIDELINES**

**PUBLIC FACILITIES FEES  
Street Improvement Fee Zones**



<b>CONSOLIDATION OF STREET IMPROVEMENT PFF ZONES</b>				
<b>CHART 1 - Citywide Nonresidential</b>				
<b>North Zone</b>				
	<b>Current Fee</b>	<b>Proposed</b>		
	<b>(9/14/10)</b>	<b>Fee</b>	<b>Difference</b>	<b>Unit</b>
Office/High Density	\$3,199.00	\$2,412.00	\$787.00	per 1000 sf
Retail/Medium Density	\$3,460.50	\$3,177.00	\$283.50	per 1000 sf
Warehouse/Low Density	\$1,236.50	\$931.50	\$305.00	per 1000 sf
<b>Central Zone</b>				
	<b>Current Fee</b>	<b>Proposed</b>		
	<b>(9/14/10)</b>	<b>Fee</b>	<b>Difference</b>	<b>Unit</b>
Office/High Density	\$2,412.00	\$2,412.00	\$0.00	per 1000 sf
Retail/Medium Density	\$3,177.00	\$3,177.00	\$0.00	per 1000 sf
Warehouse/Low Density	\$931.50	\$931.50	\$0.00	per 1000 sf
<b>South Zone</b>				
	<b>Current Fee</b>	<b>Proposed</b>		
	<b>(9/14/10)</b>	<b>Fee</b>	<b>Difference</b>	<b>Unit</b>
Office/High Density	\$3,513.00	\$2,412.00	\$1,101.00	per 1000 sf
Retail/Medium Density	\$3,886.00	\$3,177.00	\$709.00	per 1000 sf
Warehouse/Low Density	\$1,388.00	\$931.50	\$456.50	per 1000 sf
<b>South Zone - Weston Ranch</b>				
	<b>Current Fee</b>	<b>Proposed</b>		
	<b>(9/14/10)</b>	<b>Fee</b>	<b>Difference</b>	<b>Unit</b>
Office/High Density	\$3,800.50	\$2,412.00	\$1,388.50	per 1000 sf
Retail/Medium Density	\$4,111.50	\$3,177.00	\$934.50	per 1000 sf
Warehouse/Low Density	\$1,177.50	\$931.50	\$246.00	per 1000 sf

NOTE: Current Chart 1 Fees listed above were reduced 50% by Council on 9/14/10. Absent further Council action, these reductions will sunset on 12/31/15.

<b>CONSOLIDATION OF STREET IMPROVEMENT PFF ZONES</b>				
<b>CHART 2 - Greater Downtown Area - Residential</b>				
<b>Central Zone</b>				
	<b>Current Fee</b>	<b>Proposed</b>		
	<b>(9/14/10)</b>	<b>Fee</b>	<b>Difference</b>	<b>Unit</b>
Single Family Units	EXEMPT	EXEMPT	\$0.00	per unit
Multiple Family Units	EXEMPT	EXEMPT	\$0.00	per unit
Guest Rooms	\$5,157.50	\$5,157.50	\$0.00	per room

NOTE: "Greater Downtown Area" limits are 100% within Central zone. Current Chart 2 Guest Room Fees listed above were reduced 50% by Council on 9/14/10. Current Chart 2 Single and Multiple Family Fees were exempted by Council on 9/14/10. Absent further Council action, these reductions/exemptions will sunset on 12/31/15.

<b>CONSOLIDATION OF STREET IMPROVEMENT PFF ZONES</b>		
<b>CHART 5 - Summary of Proposed New Fees</b>		
	<b>Proposed Fee</b>	<b>Unit</b>
<b>Single Family Units</b>		
Greater Downtown Area*	EXEMPT	per unit
10/14/2008 Citywide Except Downtown*	\$8,613.00	per unit
Beyond 10/14/2008 City Limits	\$13,226.00	per unit
<b>Multiple Family Units</b>		
Greater Downtown Area*	EXEMPT	per unit
10/14/2008 Citywide Except Downtown*	\$4,828.00	per unit
Beyond 10/14/2008 City Limits	\$9,656.00	per unit
<b>Guest Rooms</b>		
Greater Downtown Area*	\$6,157.50	per room
10/14/2008 Citywide Except Downtown*	\$5,157.50	per room
Beyond 10/14/2008 City Limits	\$10,315.00	per room
Office/High Density - Citywide*	\$2,412.00	per 1000 sf
Retail/Medium Density - Citywide*	\$3,177.00	per 1000 sf
Warehouse/Low Density - Citywide*	\$931.50	per 1000 sf

\*Subject to sunset clauses adopted by Council 9/14/10 (see Charts 1 - 4)

<b>CONSOLIDATION OF STREET IMPROVEMENT PFF ZONES</b>				
<b>CHART 3 Existing City Limits as of 10/14/08 Residential</b>				
<b>North Zone</b>				
	Current Fee (9/14/10)	Proposed Fee	Difference	Unit
Single Family Units	\$7,690.50	\$6,613.00	\$1,077.50	per unit
Multiple Family Units	\$5,814.50	\$4,828.00	\$786.50	per unit
Guest Rooms	\$5,999.00	\$5,157.50	\$841.50	per room
<b>Central Zone</b>				
	Current Fee (9/14/10)	Proposed Fee	Difference	Unit
Single Family Units	\$6,613.00	\$6,613.00	\$0.00	per unit
Multiple Family Units	\$4,828.00	\$4,828.00	\$0.00	per unit
Guest Rooms	\$5,157.50	\$5,157.50	\$0.00	per room
<b>South Zone (incl. Weston Ranch)</b>				
	Current Fee (9/14/10)	Proposed Fee	Difference	Unit
Single Family Units	\$8,177.50	\$6,613.00	\$1,564.50	per unit
Multiple Family Units	\$5,968.00	\$4,828.00	\$1,140.00	per unit
Guest Rooms	\$8,378.00	\$5,157.50	\$1,220.50	per room

NOTE: Current Chart 3 Fees listed above were reduced 50% by Council on 9/14/10. Absent further Council action, these reductions will sunset on 12/31/12

<b>CONSOLIDATION OF STREET IMPROVEMENT PFF ZONES</b>				
<b>CHART 4 Beyond Existing City Limits as of 10/14/08 Residential</b>				
<b>North Zone</b>				
	Current Fee (9/14/10)	Proposed Fee	Difference	Unit
Single Family Units	\$15,381.00	\$13,226.00	\$2,155.00	per unit
Multiple Family Units	\$11,229.00	\$9,856.00	\$1,573.00	per unit
Guest Rooms	\$11,998.00	\$10,315.00	\$1,683.00	per room
<b>Central Zone</b>				
	Current Fee (9/14/10)	Proposed Fee	Difference	Unit
Single Family Units	\$13,226.00	\$13,226.00	\$0.00	per unit
Multiple Family Units	\$9,856.00	\$9,856.00	\$0.00	per unit
Guest Rooms	\$10,315.00	\$10,315.00	\$0.00	per room
<b>South Zone (incl. Weston Ranch)</b>				
	Current Fee (9/14/10)	Proposed Fee	Difference	Unit
Single Family Units	\$16,355.00	\$13,228.00	\$3,129.00	per unit
Multiple Family Units	\$11,936.00	\$9,856.00	\$2,200.00	per unit
Guest Rooms	\$12,758.00	\$10,315.00	\$2,441.00	per room

Current Chart 4 Fees listed above were NOT reduced on 9/14/10. However, practical application is nil at this point and expected to remain so until Chart 3 reductions sunset on 12/31/12.

**PUBLIC FACILITIES FEE PROGRAM  
ADMINISTRATIVE GUIDELINES**

**I. FEE COLLECTION**

These guidelines primarily apply to the implementation and administration of Stockton Municipal Code section 16.72.260, which imposes Public Facilities Fees on new development. When applicable, these guidelines shall also apply to the implementation and administration of all other code sections, which impose fees or mitigation measures on new development, including, but not limited to the following:

Wastewater.....	13.12.010
Water.....	13.04.010
Traffic Signal.....	16.72.140
Street Sign.....	16.72.170
Street Tree.....	16.72.180
Parklands.....	16.72.060

Should any situations arise which are not covered by the guidelines set forth above, the City Manager shall have the authority to make a decision as to how the ordinance and any corresponding resolution are to be administered. Such decisions are to be in writing.

Any applicant dissatisfied with the decision of the City Manager may appeal such decision to the City Council by filing written notice thereof with the City Manager within 10 days of receipt of the City Manager's decision.

**A. Fee Determination**

The following paragraphs provide information as to which department determines the fee amounts for various types of development.

**1. Fee Exemptions and Credits for Prior Use**

Upon receipt of an application for a building permit, the Community Development Department (CDD) determines if it is a permit upon which fees are to be imposed. The fee is to be imposed on permits for the siting of a mobile home and the construction of buildings, specifically excluding any partial permits. The fees shall be charged and paid at the time of issuance of a building permit for development.

It is also imposed on applications for a building permit to add to or alter an existing building (with a credit for prior use). The amount of credit will be for the equivalent of the public facility fees that would currently be assessed against the existing building (as if a building permit for the existing building were pulled simultaneously with the permit for the alterations and/or additions). As an example, if the prior use of the property would have generated 10 Dwelling Unit Equivalents (DUE) and the new building will

generate 15 DUE, then the utilities and street improvement portion of the public facility fee would be based upon the cost of the additional 5 DUE.

The Public Facilities Fees resolution specifies exemptions (under certain conditions) for (1) residential additions, (2) non-residential additions of less than ten percent additional floor area or less than ten percent additional DUE, and (3) replacement construction. The exemption for replacement or reconstruction of buildings that have been destroyed or demolished applies so long as a new building permit is issued for the reconstruction within five years after the demolition. Thereafter, the amount of credit given against fees for the prior use declines 20 percent per year. It is the property owner's responsibility to provide sufficient proof to the City in establishing the date of demolition or destruction of the building and the prior use that existed. In order to be eligible, the property owner must request a credit for the prior use on or before the payment of fees and issuance of the building permit. The Public Facilities Fees are not imposed when to do so would be inconsistent with California law or any of the other provisions of the City of Stockton ordinances or resolutions cited above. The CDD determines if the project qualifies for an exemption under any of these exemption categories.

Any applicant dissatisfied with the decision of the CDD may appeal such decision to the City Manager by filing written notice with the CDD within 10 days of receipt of the CDD's decision.

## **2. Responsibility for Fee Calculation - Residential**

Upon receipt of an application for a building permit for residential units (as defined in the resolution), the CDD determines the number of single-family units, multiple units, and/or guest rooms and adds this information to the application. The application is then circulated to other departments for their input and then back to CDD for calculation of the fees, except that the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) fee will be calculated by and collected by SJCOG, Inc

## **3. Responsibility for Fee Calculation - Non-Residential**

Parkland and community recreation fees are not imposed on non-residential development. The CDD has the responsibility for making the non-residential fee calculations, except for SJMSCP, wastewater, water, and surface water supply. The responsibility for determining SJMSCP, surface water supply, water, and wastewater fees are as noted below.

Employment is used as an indicator of service need and, hence, as a basis for the non-residential fees with the exception of street improvement, traffic signals, surface water supply, wastewater, and water. The guidelines for determining square footage and employment density are:

**a. Square Footage** - Upon receipt of an application for a building permit for non-residential development, the CDD footage is measured as defined in the California Building Code (CBC). For improvements where the square footage is not appropriately

defined by the CBC definition, e.g. gas stations, a co-generation plant, etc., the CDD develops appropriate square footage equivalents. As explained below, employment is used as the basis for the determination of most of the fees. The square footage equivalents are therefore based on projected employment (the employment typical for that type of development).

b. **Employment Density** - Except as noted above, employment is used as an indicator of service need and, hence, as a basis for all non-residential development fees. The CDD determines whether the typical use of the improvements will be characterized by high, medium, or low employment density and adds that information to the application. The high, medium, and low employment density ranges are less than 400 square feet, between 400 and 600 square feet, and greater than 600 square feet per employee respectively. Office space is categorized as high employment density, retail space as medium employment density, and warehouse and manufacturing space as low employment density. The characteristics of the space, along with the anticipated first use, are factors in the determination of the employment density.

If the space is divided among more than one type of space each with differing employment densities, then the square footage allocated to each type will be determined, except that any type of space constituting less than 25 percent of the total space will be included in the majority space type. As examples, offices in manufacturing plants will be part of the manufacturing space and storage space in retail stores will be retail space, as long as they are no more than 25 percent of the total space.

c. **Water, Wastewater, and Surface Water Supply Fees** - The application is circulated to the Municipal Utilities Department for determination of the water, wastewater, and surface water supply fees.

d. **Other Fees** - The CDD determines the remaining fees, except that the SJMSCP fee is determined by and collected by SJCOG, Inc.

e. **Fee Determination** - The above noted fees will be determined within 15 working days.

#### 4. **Projects Not Requiring Building Permits**

The fee is also imposed to the extent permitted by law on any development which does not require a building permit from the City of Stockton (such as a hospital, which makes application to the State). Such a development will often be required to apply to the City for a permit other than a building permit, for example, use permit, encroachment, water, or sewer connection permit. Upon receipt of such an application, the issuing department follows essentially the same procedure as described above for building permits.



## 5. SJMSCP Fee

a. In order to implement the goals and objectives of the SJMSCP, and to mitigate the cumulative and site-specific impacts of new development on undeveloped lands within the City of Stockton and in San Joaquin County, the establishment of preserve lands will be necessary to compensate for impacts to threatened, endangered, rare, and unlisted SJMSCP Covered Species and other wildlife, and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values, and other beneficial Open Space uses. While those undertaking new development pursuant to the SJMSCP may opt to dedicate lands consistent with the SJMSCP preserve designs or to purchase credits from mitigation banks, most of the contribution to the SJMSCP costs from new development will be in the form of SJMSCP fees.

b. The SJMSCP Fee shall be collected by SJCOG, Inc. The SJMSCP Fee supersedes and incorporates the City of Stockton's pre-existing Habitat/Open Space Conservation Fee (established by Ordinance No. 029-94 and Resolution No. 94-0589). Such fees, along with any interest earnings, shall be used solely to pay for those uses(s) described in the SJMSCP which shall include the following:

- a. To pay for acquisition of preserve lands (and associated transaction costs);
- b. To pay for monitoring and restoration and/or enhancement of preserve lands;
- c. To pay for endowment for long-term management of preserve lands; and
- d. To pay for initial and on-going administration of the SJMSCP.

c. The SJMSCP Fees shall be as categorized, and in the sum of the amounts specified, in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP, with the exception that the fee established at the adoption of this ordinance shall be initially adjusted to 2002 dollars and re-adjusted annually thereafter in January of each year, based on SJCOG, Inc.'s annual index adjustment as specified in the SJMSCP Financial Analysis Update, dated November 2, 2006, or as amended. A summary of the SJMSCP Fees is attached hereto as Appendix D and incorporated herein by reference. The City's pre-existing Habitat/Open Space Conservation Fee (Category F) shall remain fixed (not subject to adjustments) for applicable on-going developments. The fees described in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP shall be determined based on SJCOG, Inc., staff review of the SJMSCP Vegetation Map(s) and confirmed by aerial photo information (as of the effective date of the SJMSCP Fee) and/or a pre-construction field survey, if necessary, to verify vegetation types on the site. The Compensation Zone Map, as described in Section 8.2.5 of the SJMSCP, shall be used to determine if the property is subject to the SJMSCP Fees and/or to the City of Stockton's pre-existing Habitat/Open Space Conservation Fee (Category F).

d. The SJMSCP Fee shall not be imposed on projects located in a "No Pay Zone" as established in the compensation zone maps. Project proponents may opt for only partial payment of the SJMSCP Fee if they choose to complete one or more of the following:

i. Dedicate, as conservation easement or fee title, habitat lands (in-lieu dedications) as specified in Sections 5.3.2.1 and 5.3.2.2 of the SJMSCP; or

ii. Purchase approved mitigation bank credits as specified in Section 5.3.2.4 of the SJMSCP; or

iii. Propose an alternative mitigation plan, consistent with the goals of the SJMSCP and equivalent or greater in biological value to option i or ii above, subject to approval by SJCOG, Inc.

e. The SJMSCP Fee shall be adjusted and implemented in January of each year as noted in Section c. above and/or in conformance with Section 7.5.2.2. of the SJMSCP. SJCOG, Inc., shall notify the City of Stockton in writing of proposed annual adjustments to the fees by October 1st of each year. SJCOG, Inc. shall be responsible for the implementation of the fee adjustment in January of each year.

#### **6. Agricultural Land Mitigation Program (in-lieu fee and in-kind acquisition)**

a. The purpose of the Agricultural Land Mitigation Program is to mitigate for the loss of agricultural land in the City of Stockton through conversion to private urban uses, including residential, commercial and industrial development.

b. The following words or phrases, when used in these Guidelines, shall have the following meanings:

(1) "Agricultural land or farmland" for the purposes of these Guidelines means important farmland, as defined by the California Department of Conservation's Farmland Monitoring and Mapping Program (FMMP) and as shown on the most recent available FMMP map of San Joaquin County. Important farmland includes prime farmland, farmland of statewide significance, and unique farmland. This definition is consistent with the purpose of the Fee, and with the definition of "agricultural land" found in the California Environmental Quality Act (Public Resources Code section 21060.1 ).

(2) "Agricultural mitigation land" means agricultural land encumbered by an agricultural conservation easement or such other conservation mechanism acceptable to the City.

(3) "Agricultural conservation easement" means an easement over agricultural land for the purpose of restricting its use to agriculture. The interest granted pursuant to an agricultural conservation easement is an interest in land which is less than fee simple. Agricultural conservation easements should be permanent.

(4) "Nexus Study" means the City of Stockton Agricultural Mitigation Fee Nexus Study, prepared June 21, 2006, as may be amended from time to time.

(5) "Qualifying entity" means a nonprofit public benefit 501(c)3 corporation operating in San Joaquin County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. A qualifying entity shall have suitable accounting and reporting procedures to assist the City in preparing the annual report described in Section g, below.

c. The Agricultural Land Mitigation Program shall apply to all, projects under the jurisdiction of the City of Stockton that would result in the conversion of agricultural land, as defined in this section, to a non-agricultural use, including residential, commercial, and industrial development. The Agricultural Mitigation Program shall apply (whether through an in-lieu fee or in-kind direct purchase) to the acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta]. The Agricultural Mitigation Program shall not apply to agricultural activities and facilities as defined by the Development Code or projects within the SJMSCP "No Pay Zone" (see h.).

d. For projects of forty (40) acres or more, the in-kind direct purchase/acquisition of an agricultural mitigation easement at a 1:1 ratio and dedication to a qualifying entity shall be required. The Owner/Developer/Successor shall pay the associated administrative, monitoring, and contingency costs identified in the fee study, subject to any inflationary adjustments.

For projects of less than forty (40) acres, the Owner/Developer/Successor shall have the option to pay an in-lieu agricultural mitigation fee. The fee shall be determined by the fee schedule in effect on the date the final subdivision map is filed, the vesting tentative map application is deemed complete, or the date a building permit is issued, as applicable.

e. Dedication of agricultural mitigation land, or payment of in-lieu fees, shall be made prior to the recordation of a final subdivision map, except where a final map is processed to create parcels that are forty (40) acres or more in size for purposes of resale and not intended for development. Where a subdivision map is not required, the dedication shall occur or the fee shall be collected before the issuance of building permits. The filing of a parcel map, which does not result in the conversion of agricultural lands, does not require dedication or payment of in-lieu fees. However, it is the intent of this section that the division of property into parcels of less than forty (acres) shall not be used to avoid dedication of mitigation lands that would otherwise be required. Therefore, projects larger than forty (acres) that are subsequently divided into parcels less than forty (40) acres are not eligible to pay in-lieu fees.

f. Agricultural mitigation shall be at a ratio of 1:1 (1 acre of mitigation land per acre of agricultural land converted to any other land use). The size of the dedication or the amount of the in-lieu fee shall be calculated based on the acres within the subdivision classified as agricultural land. Where a subdivision map is not required, the fee shall be

calculated based on the acres classified as agricultural land within the parcel for which the building permit is issued.

g. Agricultural mitigation fees shall be placed in a separate Agricultural Mitigation Fee account to avoid commingling of the fees with the other funds of the City of Stockton. The fees may be temporarily invested. Such fees, along with any interest earnings, shall be used solely to pay for those uses described in the Nexus Study which shall include the following:

(1) To pay for acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta].

(2) To pay for transaction costs related to the acquisition of agricultural mitigation lands.

(3) To pay for ongoing monitoring and administrative costs related to the ongoing stewardship of agricultural mitigation lands.

(4) To provide a contingency for unexpected transaction costs or future legal costs required to maintain the terms of an agricultural conservation easement.

Agricultural conservation fees may be expended by the City of Stockton or transferred to the Central Valley Farmland Trust, or other qualifying entity as determined by City Council, for the purpose of acquiring agricultural mitigation land. For funds transferred to the Central Valley Farmland Trust, or a qualifying entity, the City shall transfer such funds quarterly, provided funds are available in the Agricultural Mitigation Fee Account. It is permissible to use agricultural mitigation fees in order to obtain agricultural mitigation lands in fee simple, provided the purpose is to place an agricultural conservation easement on such lands, and make the lands available by sale for agricultural use.

h. The Agricultural Mitigation Program shall not apply to projects located in the "No Pay Zone" as established in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) compensation zone maps.

i. The specific parcel(s) containing a residential project that provides affordable housing and complies with the following (see Development Code chapter 16.40 for specific development requirements) shall be exempt from the Agricultural Land Mitigation Program:

Consist of five or more dwelling units;

Be available so that at least:

1. Twenty percent of the total number of proposed dwelling units are for lower-income household, as defined in Health and Safety Code section 50079.5; and/or
2. Ten percent of the total number of proposed dwelling units are for very low-income households, as defined in Health and Safety Code section 50105.

This exemption shall apply exclusively to the net parcel area on which the affordable housing project is located and shall not apply to any other parcels within the same subdivision, planned development, Master Development Plan, Specific Plan, or other commonly owned or planned areas.

- j. Stacking of habitat easements on top of existing agricultural easements is allowable with concurrence from San Joaquin Council of Governments and the qualifying entity administering the agricultural easement.
- k. Agricultural easements shall be established in perpetuity.
- l. Projects that qualify to pay the in-lieu fee shall be subject to a 2.5% administration fee. In addition, agricultural mitigation fees shall not be eligible for the "Deferred Payment" option set forth in Section C.
- m. The City shall report to the City Council once each fiscal year concerning the fees and accounts, including any portions of fees remaining unexpended or uncommitted five (5) or more years after deposit. The City Council shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five (5) or more years after deposit of the fee, to identify the purpose to which the fee is put, and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

A refund of unexpended or uncommitted fee revenue for which a need cannot be demonstrated, along with accrued interest may be made to the current owner(s) of the development project(s) by the City on a prorated basis. The City may refund unexpended and uncommitted fee revenue that has been found by the City Council to be no longer needed, by direct payment or by off-setting other obligations owed to the City by the current owner(s) of the development projects(s).

If the administrative costs of refunding unexpended and uncommitted revenues collected pursuant to this program exceed the amount to be refunded, City, after a public hearing, for which notice has been published pursuant to Government Code Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which the fee is collected subject to this Chapter that serves the project on which the fee was originally imposed.

**B. Place of Collection**

The CDD totals the fees as determined by the appropriate departments and informs the applicant of the amounts of the total and its components. The applicant pays the SJMSCP fee directly to SJCOG, Inc. and then brings a receipt or voucher of payment to the City as proof of payment prior to the issuance of the building permit. The applicant pays all other fees simultaneously with the issuance of the permit unless the applicant qualifies for and elects to defer payment of the fees as explained below.

**C. Deferred Payment - Non-Residential**

Rather than paying "development fees" at the time a building permit is issued, the developer who has qualified the project as a "qualified project" with the City Manager's Office, Economic Development Division, may elect to defer payment of all or a portion of those fees with the exception of surface water supply fee, air quality mitigation fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fees.

**1. Definitions**

- a. A "qualified project" is defined as a commercial, office, or industrial/warehouse project on one parcel of land or a group of non-residential contiguous parcels under the same ownership; and
- b. An "Enterprise Zone project" is any project which is within the definition above and located within the boundaries of the Enterprise Zone as existing or hereafter amended
- c. "Development fees" include the following:

Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)  
 Wastewater Fee (S.M.C. 13.12.010)  
 Water Fee (S.M.C. 13.04.010)  
 Traffic Signal Fee (S.M.C. 16.72.140)

**2. Deferral of Fees**

- a. For a "qualified project," if the total amount of "development fees" due and payable at the time of issuance of a building permit or multiple permits issued concurrently for a project exceeds \$100,000, the property owner may enter into a Deferred Payment Agreement with the City to pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner's option except that wastewater and water fees shall be paid in full within five (5) years).

b. For an "Enterprise Zone project," if the total amount of "development fees" due and payable at the time of issuance of a building permit, or multiple permits issued concurrently for a project, exceeds \$20,000, the property owner may enter into a Deferred Payment Agreement with the City for payment of any amount of "development fees" with an initial payment at time of issuance of the building permit of not less than twenty percent (20%) of those fees and the remaining eighty percent (80%) paid in equal annual installments over a period of five (5) years (or less, at the owner's election) or pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner's option except that wastewater and water fees shall be paid in full within five (5) years).

c. There is also the possibility to defer fees if the total amount of "development fees" due and payable is \$20,000 or greater but less than \$100,000 as set forth in Appendix E attached hereto and incorporated herein.

### 3. Security

a. For a "qualified project," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment. On a case by case basis, adequate security acceptable to the City and equal to the unpaid balance may be provided.

b. For "Enterprise Zone projects," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment.

### 4. Repayment Terms

a. Interest: The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July. For "Enterprise Zone projects" with a five (5) year or less payback period, interest shall begin to accrue on the first anniversary of the agreement.

b. Due on Transfer: The unpaid balance together with accrued interest shall be due and payable in full upon the sale or any other transfer of the property.

c. Recording and Processing Fees: All such fees shall be paid by the owner or applicant.

## **5. Processing Deferred Fee Requests**

- a. For "qualified projects," and "Enterprise Zone projects," an application shall be submitted to the Revitalization Department for review, processing, and determination of eligibility.
- b. The applicant shall provide, with the application, a preliminary title report, legal description of the property, and a brief description of the project.
- c. If the project is eligible, the Revitalization Department shall prepare the agreement and security documents for review and execution. The executed documents shall be returned to the Revitalization Department for processing. Once the deferral agreement is executed by the City and the security documents have been approved and/or recorded, the Revitalization Department will issue a notice to the CDD to proceed with issuance of the building permit(s), stating the amount of fees to be collected at issuance, and deferral of the balance of the development fees.

## **6. Redevelopment Agency Deferral Authority for Nonresidential Governmental Uses/Tenancies**

The Redevelopment Agency of the City of Stockton is authorized to offer additional fee deferral opportunities in connection with the redevelopment of the City's downtown for redevelopment projects involving government office uses/tenancies that meet all of the following criteria: Consist of office facilities of 25,000 square feet or greater; require a conditional use permit (i.e., for a use not permitted outright); are located along the Stockton Channel Area; and are constructed as a multiple (not single) story building. The deferral afforded the Redevelopment Agency pursuant to this provision shall allow for a deferral of up to 100% of the development fees (as defined in this section) for a maximum period of up to 55 years and shall include an option, as determined by staff on a case by case basis, of no required down payment and an interest rate as low as 0% on the deferred principal.

## **D. Deferred Payment - Low/Moderate Income Residential**

Rather than paying "development fees" at the time a building permit is issued, the developer, who has pre-qualified his "qualified residential project" with the Revitalization Department of the City, may elect to defer payment of all or a portion of those fees (except for the Regional Transportation Impact Fee, San Joaquin County Facilities Fee, Agricultural Mitigation Fee, Air Quality Mitigation Fee, Surface Water Supply Fee, and SJMSCP Fee).

### **1. Definitions**

A "qualified residential project," as certified by the Revitalization Department, is defined as either:



a. A single-family housing project consisting of one or more homes on one or more lots within an approved subdivision under the same ownership. Single-family home projects must be sold to owner-occupied, first-time home buyers whose combined family income is equal to or less than 100% of the median income for the Stockton Metropolitan Statistical Area as contained in HUD's Section 8 Housing Program Income Limits as adjusted from time to time. The home purchase price shall not exceed the FHA limit for home mortgages without mutual mortgage insurance as adjusted from time to time.

b. A multi-family housing project consisting of any new construction project meeting the definition of a "low rent housing project" as contained in Article XXXIV of the California Constitution requiring local voter approval or any other project utilizing local, state, and/or federal funds in whole or in part in the acquisition or construction of said project.

"Development Fees" shall be defined as:

Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)  
 Parkland Fee (S.M.C. 16.72.160)  
 Traffic Signal Fee (S.M.C. 16.72.140)  
 Wastewater Fee (S.M.C. 13.12.010)  
 Water Connection Fee (S.M.C. 13.04.010)

## 2. Deferral and Repayment

Development fees for "qualified residential projects" shall be deferred during the period the project is under construction. In the case of a single-family project, fees deferred shall be collected without interest at the time permanent take-out financing is put in place as part of the closing transaction for the purchase of the home by the qualified buyer. In the case of multi-family projects, fees deferred shall be collected without interest prior to final approval of the Building Permit and issuance of a Certificate of Occupancy.

## 3. Security

All development fees deferred for "qualified residential projects" shall be secured by recorded liens or deeds of trust encumbering each lot of record involved with the project. Said liens or deeds of trust shall be recorded prior to issuance of Building Permits and shall be secondary only to deeds of trust associated with acquisition or construction financing. Full or partial reconveyance of encumbrances shall be issued by the City at the time "development fees" are paid. All document preparation and recording fees shall be paid by developer or property owner applying for the fee deferral.

#### 4. Penalty

All development fees deferred pursuant to this program shall be subject to a penalty if the single-family home projects are not sold to buyers meeting the income qualifications or if the purchase price exceeds the maximum allowed. In the case of multi-family projects, a penalty will be assessed if, following initial approval, the project is restructured so as not to meet the definition of a low rent housing project or refinanced so as not to include public funds as contained in the definition of a "qualified residential project." The penalty assessed shall be in the form of an interest payment equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July computed from the date the fee is deferred until totally repaid.

#### 5. Processing Deferred Fee Requests

Developers or owners of "qualified residential projects" shall make application for the deferment of fees to the Revitalization Department. In the case of single-family housing projects, the content of the application shall be a list of all fees applicable to the project as calculated by the CDD. In addition, the applicant shall submit a brief description of the project profiling the type of buyer expected to reside within the project. This shall include projected annual income of home buyers and projected sale prices.

For "qualified multi-family projects," the developer or applicant shall submit a project proforma and financial feasibility analysis that includes sources of all financing associated with the project; projected rents for the project; operating maintenance; and debt service costs associated with the project. The application shall also include a preliminary title report and legal description. The Revitalization Department shall review the information submitted and make a determination as to whether the project meets the criteria for a deferral of fees. For those projects meeting the above-mentioned criteria, the Revitalization Department will prepare a Development Fee Deferral Agreement along with a security document consisting of a lien or deed of trust to be executed by the applicant and returned to the City for processing. Once the deferral agreement is executed by the City and the security document has been recorded, the Revitalization Department will issue a notice to the CDD to proceed with the deferral of the development fees and the issuance of the Building Permit.

#### 6. Collection

In the case of single-family housing projects, development fees shall be collected as part of the sales transaction between developer and qualified home purchaser. Development fees shall be paid to the City out of the proceeds of the permanent take-out loan. At the time the sales transaction takes place, the developer or escrow company shall submit an appropriate document to the Revitalization Department evidencing that the proposed buyer meets the income qualifications and the purchase price of the home is within the maximum amount allowed. Evidence of satisfying this criteria will include a copy of the purchase agreement and copies of the buyer's last three years income tax returns. The Revitalization Department will review this information and make a final determination as to the buyer's eligibility. The Revitalization Department will determine whether the development fee repayment

amount will include an interest payment as a penalty and submit this demand to the escrow agent along with reconveyance documents. The escrow company will collect and remit to the appropriate demand and transmit it to the Revitalization Department for processing.

In the case of multi-family projects prior to the issuance of a Certificate of Occupancy or the placement of permanent take-out financing for the project, the developer shall submit evidence that long-term financing agreements have been executed with public entities that contain provisions and assurances that the project will remain affordable to lower-income tenants during the duration of the finance period. Upon review and approval of such documents, the Revitalization Department will calculate the appropriate repayment amount and follow the remainder of the procedures as described above.

#### **E. Refunds**

Refunds, less the administrative fee, will be made according to City procedures.

### **II. EXPENDITURES**

#### **A. Capital Improvement Program**

State law requires that development fees be imposed only when the nature of the facilities to accommodate the development has been identified and the cost of these facilities estimated. Furthermore, the City must account for the use of the funds. In order to fulfill this requirement, the City has undertaken a number of studies analyzing public facility needs and/or the need for compensation measures to offset the impacts of future development. The intent of Appendix A is to list the various types of public facilities and compensations governed by these administrative guidelines and the respective authority that established the needs for facility type. The referenced authority does include specific public facilities scheduled for partial and/or full funding by the public facilities fee as well as guidelines for use of the SJMSCP fee component of the public facilities fees.

Projects to be constructed by the City in the next five years are included in the City's Capital Improvements Program (CIP). This includes projects to accommodate new development and to cure existing deficiencies.

Beginning with the 1990-91 fiscal year, the facilities listed in Appendix A (in its updated form) will be reviewed and those projects planned for construction within five years will be included in the City's CIP budget. The City's CIP budget will also include:

1. Projects scheduled for construction by developers within the next fiscal year and funded with a combination of developer and City funds.
2. Projects which have been constructed by the developer that have City Council approved reimbursement agreements and funds have been scheduled to be paid to the developer in the next fiscal year(s) based

upon available City funding. For reimbursement purposes, the City will set aside, for each fee area and facility type, 25 percent of the fees collected (minus credits) in the prior year. Any unexpended portion of the 25 percent reimbursement set aside will be carried over for one year only.

3. Projects which have been constructed by the developer that have City Council approved reimbursement agreements for which no funds have been scheduled to be paid to the developer in the next fiscal year due to lack of funds. It is the intent of this provision that all projects that have City Council approved reimbursement agreements shall be included in the City's CIP budget and in order of priority based upon the effective date of the reimbursement agreement.

#### **B. Budgeting for Proposed Projects**

At the time that an actual appropriation for a project is requested, either during the annual budget preparation or as an appropriation during the fiscal year, the following information must be provided as part of the request:

1. To insure satisfaction of the nexus requirement, identify the proposed project as being one of the Council projects intended to be provided by the public facilities fees or, within the adopted guidelines for use of SJMSCP fees. See Appendix A.
2. Document the percentage of cost, if any, of the proposed project that is to correct existing deficiencies. Reference to an analysis that may be included as part of Appendix A would satisfy this requirement.
3. Be specific in identifying the source of funding for the proposed project. For the percentage that is approved for expenditure of public facilities fees other than SJMSCP fees, it is necessary that the facility type and fee area be identified for each portion of the appropriation. This is necessary because the revenues are being collected by a particular fee area for each facility type and are being accounted for by specific facility type and fee area. For the percentage that is determined to correct existing deficiencies, identify specifically the other source of funds.
4. Check with the Administrative Services Department to determine if sufficient funds are available in the correct accounts for the necessary appropriations. The amount available will include the fund balance, less any amounts already appropriated or otherwise encumbered, plus estimated revenues. The CDD and Public Works Departments will provide the Administrative Services Department with projections of estimated revenues from public facilities fees by facility type and fee area.
5. ~~Initiate a loan between fee areas if sufficient funds are not available in the correct accounts.~~

### C. Existing Deficiencies

The adoption of the Public Facilities Fee program require the City to correct existing deficiencies. It is the intention of the City to appropriate funds each year such that at the end of each year, the cumulative appropriations will meet a defined proportion of the total cost of correcting deficiencies. This proportion shall be calculated as the ratio of the number of years after 1987-88 (the number of years the fee program has been in effect) to the 20 years through the 2007-08 fiscal year. In other words, it is the City's intention that funds to correct the deficiencies will be provided by the 2007-08 fiscal year at an approximate rate of one-twentieth each year. Existing deficiencies will be funded by general funds and/or bond issues (net of issuance costs).

### D. Zone Expenditure Guidelines

~~The principle that the fees collected from a development must be used for the facilities to accommodate that development is being further fulfilled by a guideline that the majority of the funds collected in each of three geographical zones of the City be used for facilities to serve that area. This restriction does not apply to the police station, surface water supply, and City office space fees, as these facilities are centrally located and serve the entire City. It also does not apply to the water, wastewater or the S/MMSGP fees. It does apply to the fire station, library, community recreation center, street improvement, parklands and traffic signal fees.~~

~~For this purpose, the City is divided into three zones: North generally north of the Calaveras River equal to fee collection areas 1 and 2; Central generally between Charter Way (now known as Martin Luther King Jr. Blvd.) and the Calaveras River equal to fee collection areas 3 and 4; and South generally south of Charter Way equal to fee collection areas 5 and 6. For each of the fees, an account has been established for each fee area. Approximately eighty-five percent of each fee collected is credited to the account for the fee area from which it was collected. The funds in the accounts for fee areas 1 and 2 will be expended for projects in the North zone. The funds in the accounts for fee areas 3 and 4 will be expended for projects in the Central zone. The funds in the accounts for fee areas 5 and 6 will be expended for projects in the South zone.~~

~~Because some service demands are made across zones, the remaining 15 percent of the fee is deposited into a City wide account (for each fee), the contents of which may be expended anywhere in the City for facilities to accommodate new development.~~

~~The above percentages could vary depending on ordinances or based on additional analysis which identified alternate distribution.~~

### E. Borrowing Among Fee Area Accounts

~~It would not well serve the City to have funds gradually building in all of the fee area accounts for an extended period of time without any one account having sufficient funds to provide a facility, thus depriving all areas of new facilities. Therefore, in order to~~

~~enable the provision of facilities as they are needed, loans can be made from one fee area account to another.~~

~~The department initiating the request for an appropriation must also initiate the loan request. The loan would be required if sufficient funds are not available in the fee area accounts within the expenditure zone. Such borrowing may only take place, however, if it can be demonstrated that the account from which the funds are borrowed will have sufficient remaining funds to appropriate to projects scheduled within that zone. A financial plan must be prepared projecting anticipated revenues to the accounts for the fee areas within the zone and proposing a repayment schedule. All loans shall require loan documentation and approval by the City Council. The account from which the funds were borrowed shall receive interest on funds loaned equal to the City's average pooled investment earnings rate.~~

~~The possible need for a loan must be addressed at least twice during the life of a project.~~

- ~~1. It may be necessary to establish a loan at the time an appropriation for a specific project is requested. Depending on the estimated beginning date of the proposed project, the above appropriation and/or loan might be based largely on estimated revenues.~~
- ~~2. It may also be necessary to establish or amend the amount of a loan at the time a department issues a purchase order or requests City Council approval of a contract for an expenditure of funds from the project account. At the request of the department managing the project, the Administrative Services Department will re-evaluate the availability of funds by comparing actual revenues collected with estimated revenues (used in step 1 above) and indicate if there is an additional need for a loan at this time. If this is the case, then the loan must be approved by the City Council before the contract or purchase order can be executed.~~

## **F. Developer In Lieu Improvements**

New development is responsible for all public facilities that are needed as a result of new development. This includes all improvements that are required by the subdivision and public improvement ordinances or identified as being necessary to satisfy mitigation measures for the project. There may be situations where a developer will incur the cost of a facility which corrects an existing City deficiency or serves other development. Therefore, under those conditions, developers will receive a reimbursement in the form of credits or cash, plus interest at the rate equal to the 11th District Cost of Funds from the date the improvements are accepted by the City, consistent with the City Council approved reimbursement agreement. Developers dedicating the land and/or constructing these facilities will be eligible for credit/ reimbursement as outlined in these administrative guidelines. Construction costs, design costs, and fees for plan checking and inspection, etc., are eligible for credit/reimbursement.

A credit/reimbursement will be given to the developer to offset the public facilities fee for that type of facility imposed on subsequent development of the parcel. In other words, a street improvement cost will only be subject to credit/reimbursement against the street improvement fee.

The amount of credit-/reimbursement shall be as outlined below for each of the appropriate fees:

Libraries, Community Recreation Centers,  
Fire Stations, & Parks:

If the developer only dedicates the land for these facilities, it is eligible for a partial credit/reimbursement equal to the percentage of the fee that is needed to acquire the land. As an example, if 50% of the parkland fee is to acquire land for parks, a developer that dedicates the land will be eligible for a 50% credit against its parkland fee for permits within its development. The developer is also eligible to be reimbursed for 50% of the parkland fees from other developments within the service area of the park.

In the case of parkland, the value of the land dedicated shall be the value of land used to calculate the parkland fee in effect on the date the land is accepted by the City Council.

If the developer also constructs one of these facilities, it is eligible for a full credit/reimbursement of the fee for permits within its development, and reimbursement of the fees from other developments within the service area of the facility.

Wastewater:

The sanitary sewer connection fee is composed of the following components: (1) treatment, (2) existing collection system, and (3) future collection systems.

If the developer constructs a completely new collection system in accordance with the Master Plan, conveying wastewater from the developed parcel to the City of Stockton Wastewater Control Facility on Navy Drive, without use of any portion of the existing City sanitary sewer system, developer is eligible for a full credit/reimbursement within its development of components (2) existing collection system and (3) future collection systems, of the connection fee. The developer is also eligible for reimbursement of a portion of the fee for both existing and future collection systems from other developments within the service area of the collection system Improvements.

If the developer connects to the existing collection system and installs mains in accordance with the Master Plan, developer is eligible for a full credit/reimbursement within its development of component (3) of the connection fee-future collection systems. The developer is also eligible for reimbursement of

a portion of the fee for future collection systems from other developments within the service area of the collection system improvement.

In no case will the reimbursement authorized under this section of the Administrative Guidelines exceed the cost of the eligible sanitary sewer improvements constructed by the developer.

Water:

If the developer constructs a portion of the water system in accordance with the Master Plan, it is eligible for a full credit/reimbursement within its development for the fee for that portion of the cost which represents water transmission mains installed which exceed the requirements of the individual development as determined by the City. The developer is also eligible for reimbursement in accordance with the City's Water Rates and Regulations.

Street Improvements:

If the developer constructs a portion of the street improvements within and adjacent to its project which are covered by the fee, it is eligible for a 50% credit/reimbursement on building permits within its development until the full cost of the improvements have been recovered. The 50% credit is necessary since only approximately 33% of the total street improvements covered by the fee are adjacent to or within undeveloped properties. The remaining improvements are freeway-related improvements, railroad grade separations, and street improvements adjacent to developed properties. Without the City retaining 50% of the fees, sufficient revenue would not be generated to fund the necessary freeway, railroad grade separations, and street improvements adjacent to developed properties.

If the developer constructs a portion of the street improvements outside and not adjacent to its development, it is eligible for a 100% credit/reimbursement on building permits until the full cost of the improvement has been recovered.

Refer to Appendix B for specifics on reimbursements for developer constructed street improvements. Also, refer to Appendix C on the procedures to be followed where past developments made significant street improvements and the development is not completely built out.

The developer shall submit a detailed cost breakdown of the public facilities to be constructed and/or the land to be dedicated for the public facilities. The cost breakdown shall also include the timing of the various improvements. In addition, the developer shall submit a yearly schedule of projected building permits through full build-out of the project. The developer shall enter the projected building permits, applicable fees, cost breakdown, interest and the proposed spread of credits/reimbursements into a spreadsheet compatible with City-used software.



The spreadsheet shall be reviewed and approved by the Public Works Department. Upon approval, the developer shall provide a copy of the spreadsheet compatible with City-used software. The spreadsheet shall be updated by the developer and reviewed and approved by the Public Works Department at least once a year. The value of the land and improvements shall not be adjusted for inflation or deflation, but the applicable fees shall be adjusted to the current fee and projected ahead in constant dollars.

The City shall enter into a credit/reimbursement agreement with the developer. The agreement shall provide for the credit/reimbursement to the developer from fees generated within the project and ~~that zone citywide~~. The timing and method of payment (credit/reimbursement) will be negotiated and included as part of the subdivision agreement or as approved by the City Council when the improvements are accepted. If the improvements are financed by an assessment district (including Mello-Roos), credits may be given to the individual property owner and/or reimbursement shall be made to the district. The proposed spread of credits/reimbursement must also be approved by the City Council prior to the subdivision improvements being accepted by the City Council.

If the credit/reimbursement agreement is submitted for approval by the City Council prior to the installation of the improvements, the costs will be based upon estimates. Upon completion of the improvements, the credit/ reimbursement agreement will be resubmitted to the City Council for approval prior to subdivision improvements being accepted.

If the developer has pulled building permits and paid public facility fees prior to the credits/reimbursement agreement being approved by the City Council, the developer will only receive credits/reimbursements on future permits. No refunds will be processed for the fees paid prior to the credit/reimbursement agreement being approved by the City Council.

When the various fees are adjusted by the City Council, the total amount to be credited/reimbursed does not change, but the amount of credit/reimbursement to be applied to an individual building permit will be adjusted. For example, if a fee was originally \$1000 and the developer receives a 50% credit or reimbursement, when the fee increases to \$1100, the developer will still receive a 50% credit or reimbursement but it will be \$550 versus the original \$500.

The developer has the option, to be determined at the time of the reimbursement agreement, of receiving credits when the building permits are issued or accumulating these credits and receiving a lump sum reimbursement at the end of each quarter, based upon claims made by the developer.

#### **G. Use of Administrative Funds**

The funds in the administrative account are not used for studies and/or administration for specific improvements or types of improvements. Such expenses are charged to the account for that type of facility, i.e., a traffic analysis charged to the Street Improvements accounts. However, administrative funds may be used for planning

studies, such as a City initiated general plan revision. The funds in the administrative account are not used to cover the cost of reviewing projects; nor are funds from any other fee account used for this purpose. The funds may be used for both consultant and staff costs. Staff costs are calculated based on time card entries.

### III. ANNUAL REPORT

#### A. Fiscal Year Summary

An annual report on the development fee program is prepared. The first portion of the report, the fiscal year summary, is prepared reasonably soon after the end of the fiscal year, as accounting information becomes available. This portion of the report includes the following information.

1. Account Balances - The information includes fiscal year revenues and the accumulated balance for each account.
2. Improvements - The report includes, for each account and subaccount, except the SJMSCP Account, the following: the constructed improvements and a projection of the funds to be collected in each of the next five years; when the next project (or projects) will be able to be funded; and the proposed projects to be undertaken in the next five years. The latter information is in a form appropriate for integration into the Capital Improvements Program. For the SJMSCP Account, the annual report will be provided by SJCOG, Inc.
3. Administration Fund - The revenues to the administration account are compared with the administration expenses incurred, both for the past fiscal year and for an appropriate longer period of time. Both future projected revenues and expenses are also included in the report, along with a recommendation either to retain the current level of administrative component of the fee, or to adjust it up or down.
4. Existing Deficiencies - The expenditures to cure existing deficiencies are set forth, both for the fiscal year and cumulatively. These expenditures are compared with the commitment to cure existing deficiencies on at least a pro rata basis between 1988 and the present 2008.
5. Reimbursement Agreements - The report includes, for each agreement, the following: the constructed improvements; the total cost of the improvement including land; all accrued interest; the outstanding balance; and the projected credit/reimbursement and source of revenue.

#### B. Fee Review and Adjustment

The second portion of the annual report is prepared three or four months before the start of the calendar year. This report is submitted to the City Council along with recommendations so that action can be taken no later than 60 days before the start of the calendar year, allowing the adjusted fees to become effective on or about January 1. This portion of the report includes the following information.

1. **Inflation Adjustments** - The report presents information on the Inflation rate during the prior calendar year as determined by the construction cost index of the Engineering News Record publication. The rate of inflation (or deflation) is applied to the fees to determine the fees for the subsequent year. A land cost index will be used to adjust the land cost portion of the fees.
2. **Reimbursement Agreements Adjustments** - The report presents information on the credits/reimbursements due developers for the subsequent year. Since the developers are eligible for credits/reimbursements plus interest, the fees shall be adjusted to cover this additional expense.
3. **Special Studies or Information** - From time to time, new information will be come available regarding the facilities needed to accommodate new development and their cost. If this information is different from that upon which the fees are currently based, the information should be documented along with calculations that determine the appropriate new fee level.
4. **Findings** - The report sets forth findings suitable for adoption by the City Council determining that, except for the adjustments listed, the prior findings on which the current fees are based are still sufficiently accurate.

Adopted Feb. 12, 1991 (Resolution No. 91-0119);  
Amended Jan. 23, 2007 (Resolution No. 07-0040);  
Amended \_\_\_\_\_ (Resolution No. \_\_\_\_-\_\_\_\_).



<b>CONSOLIDATION OF STREET IMPROVEMENT PEF ZONES</b>		
<b>CHART 5 - Summary of Proposed New Fees</b>		
	Proposed Fee	Unit
<b>Single Family Units</b>		
Greater Downtown Area*	EXEMPT	per unit
10/14/2008 Citywide Except Downtown*	\$8,613.00	per unit
Beyond 10/14/2008 City Limits	\$13,226.00	per unit
<b>Multiple Family Units</b>		
Greater Downtown Area*	EXEMPT	per unit
10/14/2008 Citywide Except Downtown*	\$4,828.00	per unit
Beyond 10/14/2008 City Limits	\$9,656.00	per unit
<b>Guest Rooms</b>		
Greater Downtown Area*	\$5,157.50	per room
10/14/2008 Citywide Except Downtown*	\$5,157.50	per room
Beyond 10/14/2008 City Limits	\$10,315.00	per room
Office/High Density - Citywide*	\$2,412.00	per 1000 sf
Retail/Medium Density - Citywide*	\$3,177.00	per 1000 sf
Warehouse/Low Density - Citywide*	\$931.50	per 1000 sf

\*Subject to sunset clauses adopted by Council 9/14/10 (see Charts 1 - 4)

Resolution No. \_\_\_\_\_

# STOCKTON CITY COUNCIL

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## RESOLUTION AUTHORIZING THE AMENDMENT OF THE PUBLIC FACILITIES FEE PROGRAM ADMINISTRATIVE GUIDELINES TO CONSOLIDATE THE STREET IMPROVEMENT FEE INTO ONE CITY-WIDE ZONE

The Public Facilities Fee Program for Street Improvements is structured to include four zones: North, Central, South, and City-wide. This zone and fee structure has led to a program that does not accurately account for the complexity of traffic impacts across all zones, has unneeded administrative and accounting burdens, differing economic impacts due to fees that vary by location, and financial instability due to inter-zone loans and a November 2009 bond issuance in the North zone; and

Consolidation of the zones into one City-wide zone would resolve this financial instability, reduce the administrative and accounting burden, and provide a uniform fee structure that does not vary by location; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Manager is authorized to amend the Public Facilities Fee Program Administrative Guidelines to remove Section II. EXPENDITURES, D. Zone Expenditure Guidelines, and E. Borrowing Among Fee Area Accounts, and make other appropriate changes as indicated.

2. The Public Facilities Fee Program Administrative Guidelines are hereby amended and approved, a copy of which is attached as Exhibit 1 and incorporated by this reference.

3. The City Manager is hereby authorized to take whatever actions are appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
ANN JOHNSTON, Mayor  
of the City of Stockton

\_\_\_\_\_  
KATHERINE GONG MEISSNER  
City Clerk of the City of Stockton  
::ODMA\GRFWISE\COS.PW.PW\_Library:176160.1

City Atty  
Review   GDP    
Date   June 15, 2011

**PUBLIC FACILITIES FEE PROGRAM  
ADMINISTRATIVE GUIDELINES**

**I. FEE COLLECTION**

These guidelines primarily apply to the implementation and administration of Stockton Municipal Code section 16.72.260, which imposes Public Facilities Fees on new development. When applicable, these guidelines shall also apply to the implementation and administration of all other code sections, which impose fees or mitigation measures on new development, including, but not limited to the following:

Wastewater.....	13.12.010
Water.....	13.04.010
Traffic Signal.....	16.72.140
Street Sign.....	16.72.170
Street Tree.....	16.72.180
Parklands.....	16.72.060

Should any situations arise which are not covered by the guidelines set forth above, the City Manager shall have the authority to make a decision as to how the ordinance and any corresponding resolution are to be administered. Such decisions are to be in writing.

Any applicant dissatisfied with the decision of the City Manager may appeal such decision to the City Council by filing written notice thereof with the City Manager within 10 days of receipt of the City Manager's decision.

**A. Fee Determination**

The following paragraphs provide information as to which department determines the fee amounts for various types of development.

**1. Fee Exemptions and Credits for Prior Use**

Upon receipt of an application for a building permit, the Community Development Department (CDD) determines if it is a permit upon which fees are to be imposed. The fee is to be imposed on permits for the siting of a mobile home and the construction of buildings, specifically excluding any partial permits. The fees shall be charged and paid at the time of issuance of a building permit for development.

It is also imposed on applications for a building permit to add to or alter an existing building (with a credit for prior use). The amount of credit will be for the equivalent of the public facility fees that would currently be assessed against the existing building (as if a building permit for the existing building were pulled simultaneously with the permit for the alterations and/or additions). As an example, if the prior use of the property would have generated 10 Dwelling Unit Equivalents (DUE) and the new building will

generate 15 DUE, then the utilities and street improvement portion of the public facility fee would be based upon the cost of the additional 5 DUE.

The Public Facilities Fees resolution specifies exemptions (under certain conditions) for (1) residential additions, (2) non-residential additions of less than ten percent additional floor area or less than ten percent additional DUE, and (3) replacement construction. The exemption for replacement or reconstruction of buildings that have been destroyed or demolished applies so long as a new building permit is issued for the reconstruction within five years after the demolition. Thereafter, the amount of credit given against fees for the prior use declines 20 percent per year. It is the property owner's responsibility to provide sufficient proof to the City in establishing the date of demolition or destruction of the building and the prior use that existed. In order to be eligible, the property owner must request a credit for the prior use on or before the payment of fees and issuance of the building permit. The Public Facilities Fees are not imposed when to do so would be inconsistent with California law or any of the other provisions of the City of Stockton ordinances or resolutions cited above. The CDD determines if the project qualifies for an exemption under any of these exemption categories.

Any applicant dissatisfied with the decision of the CDD may appeal such decision to the City Manager by filing written notice with the CDD within 10 days of receipt of the CDD's decision.

## **2. Responsibility for Fee Calculation - Residential**

Upon receipt of an application for a building permit for residential units (as defined in the resolution), the CDD determines the number of single-family units, multiple units, and/or guest rooms and adds this information to the application. The application is then circulated to other departments for their input and then back to CDD for calculation of the fees, except that the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) fee will be calculated by and collected by SJCOG, Inc

## **3. Responsibility for Fee Calculation - Non-Residential**

Parkland and community recreation fees are not imposed on non-residential development. The CDD has the responsibility for making the non-residential fee calculations, except for SJMSCP, wastewater, water, and surface water supply. The responsibility for determining SJMSCP, surface water supply, water, and wastewater fees are as noted below.

Employment is used as an indicator of service need and, hence, as a basis for the non-residential fees with the exception of street improvement, traffic signals, surface water supply, wastewater, and water. The guidelines for determining square footage and employment density are:

**a. Square Footage** - Upon receipt of an application for a building permit for non-residential development, the CDD footage is measured as defined in the California Building Code (CBC). For improvements where the square footage is not appropriately



defined by the CBC definition, e.g. gas stations, a co-generation plant, etc., the CDD develops appropriate square footage equivalents. As explained below, employment is used as the basis for the determination of most of the fees. The square footage equivalents are therefore based on projected employment (the employment typical for that type of development).

b. **Employment Density** - Except as noted above, employment is used as an indicator of service need and, hence, as a basis for all non-residential development fees. The CDD determines whether the typical use of the improvements will be characterized by high, medium, or low employment density and adds that information to the application. The high, medium, and low employment density ranges are less than 400 square feet, between 400 and 600 square feet, and greater than 600 square feet per employee respectively. Office space is categorized as high employment density, retail space as medium employment density, and warehouse and manufacturing space as low employment density. The characteristics of the space, along with the anticipated first use, are factors in the determination of the employment density.

If the space is divided among more than one type of space each with differing employment densities, then the square footage allocated to each type will be determined, except that any type of space constituting less than 25 percent of the total space will be included in the majority space type. As examples, offices in manufacturing plants will be part of the manufacturing space and storage space in retail stores will be retail space, as long as they are no more than 25 percent of the total space.

c. **Water, Wastewater, and Surface Water Supply Fees** - The application is circulated to the Municipal Utilities Department for determination of the water, wastewater, and surface water supply fees.

d. **Other Fees** - The CDD determines the remaining fees, except that the SJMSCP fee is determined by and collected by SJCOG, Inc.

e. **Fee Determination** - The above noted fees will be determined within 15 working days.

#### 4. **Projects Not Requiring Building Permits**

The fee is also imposed to the extent permitted by law on any development which does not require a building permit from the City of Stockton (such as a hospital, which makes application to the State). Such a development will often be required to apply to the City for a permit other than a building permit, for example, use permit, encroachment, water, or sewer connection permit. Upon receipt of such an application, the issuing department follows essentially the same procedure as described above for building permits.

## 5. SJMSCP Fee

a. In order to implement the goals and objectives of the SJMSCP, and to mitigate the cumulative and site-specific impacts of new development on undeveloped lands within the City of Stockton and in San Joaquin County, the establishment of preserve lands will be necessary to compensate for impacts to threatened, endangered, rare, and unlisted SJMSCP Covered Species and other wildlife, and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values, and other beneficial Open Space uses. While those undertaking new development pursuant to the SJMSCP may opt to dedicate lands consistent with the SJMSCP preserve designs or to purchase credits from mitigation banks, most of the contribution to the SJMSCP costs from new development will be in the form of SJMSCP fees.

b. The SJMSCP Fee shall be collected by SJCOG, Inc. The SJMSCP Fee supersedes and incorporates the City of Stockton's pre-existing Habitat/Open Space Conservation Fee (established by Ordinance No. 029-94 and Resolution No. 94-0589). Such fees, along with any interest earnings, shall be used solely to pay for those uses(s) described in the SJMSCP which shall include the following:

- a. To pay for acquisition of preserve lands (and associated transaction costs);
- b. To pay for monitoring and restoration and/or enhancement of preserve lands;
- c. To pay for endowment for long-term management of preserve lands; and
- d. To pay for initial and on-going administration of the SJMSCP.

c. The SJMSCP Fees shall be as categorized, and in the sum of the amounts specified, in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP, with the exception that the fee established at the adoption of this ordinance shall be initially adjusted to 2002 dollars and re-adjusted annually thereafter in January of each year, based on SJCOG, Inc.'s annual index adjustment as specified in the SJMSCP Financial Analysis Update, dated November 2, 2006, or as amended. A summary of the SJMSCP Fees is attached hereto as Appendix D and incorporated herein by reference. The City's pre-existing Habitat/Open Space Conservation Fee (Category F) shall remain fixed (not subject to adjustments) for applicable on-going developments. The fees described in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP shall be determined based on SJCOG, Inc., staff review of the SJMSCP Vegetation Map(s) and confirmed by aerial photo information (as of the effective date of the SJMSCP Fee) and/or a pre-construction field survey, if necessary, to verify vegetation types on the site. The Compensation Zone Map, as described in Section 8.2.5 of the SJMSCP, shall be used to determine if the property is subject to the SJMSCP Fees and/or to the City of Stockton's pre-existing Habitat/Open Space Conservation Fee (Category F).

d. The SJMSCP Fee shall not be imposed on projects located in a "No Pay Zone" as established in the compensation zone maps. Project proponents may opt for only partial payment of the SJMSCP Fee if they choose to complete one or more of the following:

i. Dedicate, as conservation easement or fee title, habitat lands (in-lieu dedications) as specified in Sections 5.3.2.1 and 5.3.2.2 of the SJMSCP; or

ii. Purchase approved mitigation bank credits as specified in Section 5.3.2.4 of the SJMSCP; or

iii. Propose an alternative mitigation plan, consistent with the goals of the SJMSCP and equivalent or greater in biological value to option i or ii above, subject to approval by SJCOG, Inc.

e. The SJMSCP Fee shall be adjusted and implemented in January of each year as noted in Section c. above and/or in conformance with Section 7.5.2.2. of the SJMSCP. SJCOG, Inc., shall notify the City of Stockton in writing of proposed annual adjustments to the fees by October 1st of each year. SJCOG, Inc. shall be responsible for the implementation of the fee adjustment in January of each year.

#### **6. Agricultural Land Mitigation Program (in-lieu fee and in-kind acquisition)**

a. The purpose of the Agricultural Land Mitigation Program is to mitigate for the loss of agricultural land in the City of Stockton through conversion to private urban uses, including residential, commercial and industrial development.

b. The following words or phrases, when used in these Guidelines, shall have the following meanings:

(1) "Agricultural land or farmland" for the purposes of these Guidelines means important farmland, as defined by the California Department of Conservation's Farmland Monitoring and Mapping Program (FMMP) and as shown on the most recent available FMMP map of San Joaquin County. Important farmland includes prime farmland, farmland of statewide significance, and unique farmland. This definition is consistent with the purpose of the Fee, and with the definition of "agricultural land" found in the California Environmental Quality Act (Public Resources Code section 21060.1 ).

(2) "Agricultural mitigation land" means agricultural land encumbered by an agricultural conservation easement or such other conservation mechanism acceptable to the City.

(3) "Agricultural conservation easement" means an easement over agricultural land for the purpose of restricting its use to agriculture. The interest granted pursuant to an agricultural conservation easement is an interest in land which is less than fee simple. Agricultural conservation easements should be permanent.

(4) "Nexus Study" means the City of Stockton Agricultural Mitigation Fee Nexus Study, prepared June 21, 2006, as may be amended from time to time.

(5) "Qualifying entity" means a nonprofit public benefit 501(c)3 corporation operating in San Joaquin County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. A qualifying entity shall have suitable accounting and reporting procedures to assist the City in preparing the annual report described in Section g, below.

c. The Agricultural Land Mitigation Program shall apply to all, projects under the jurisdiction of the City of Stockton that would result in the conversion of agricultural land, as defined in this section, to a non-agricultural use, including residential, commercial, and industrial development. The Agricultural Mitigation Program shall apply (whether through an in-lieu fee or in-kind direct purchase) to the acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta]. The Agricultural Mitigation Program shall not apply to agricultural activities and facilities as defined by the Development Code or projects within the SJMSCP "No Pay Zone" (see h.).

d. For projects of forty (40) acres or more, the in-kind direct purchase/acquisition of an agricultural mitigation easement at a 1:1 ratio and dedication to a qualifying entity shall be required. The Owner/Developer/Successor shall pay the associated administrative, monitoring, and contingency costs identified in the fee study, subject to any inflationary adjustments. '

For projects of less than forty (40) acres, the Owner/Developer/Successor shall have the option to pay an in-lieu agricultural mitigation fee. The fee shall be determined by the fee schedule in effect on the date the final subdivision map is filed, the vesting tentative map application is deemed complete, or the date a building permit is issued, as applicable.

e. Dedication of agricultural mitigation land, or payment of in-lieu fees, shall be made prior to the recordation of a final subdivision map, except where a final map is processed to create parcels that are forty (40) acres or more in size for purposes of resale and not intended for development. Where a subdivision map is not required, the dedication shall occur or the fee shall be collected before the issuance of building permits. The filing of a parcel map, which does not result in the conversion of agricultural lands, does not require dedication or payment of in-lieu fees. However, it is the intent of this section that the division of property into parcels of less than forty (acres) shall not be used to avoid dedication of mitigation lands that would otherwise be required. Therefore, projects larger than forty (acres) that are subsequently divided into parcels less than forty (40) acres are not eligible to pay in-lieu fees.

f. Agricultural mitigation shall be at a ratio of 1:1 (1 acre of mitigation land per acre of agricultural land converted to any other land use). The size of the dedication or the amount of the in-lieu fee shall be calculated based on the acres within the subdivision classified as agricultural land. Where a subdivision map is not required, the fee shall be

calculated based on the acres classified as agricultural land within the parcel for which the building permit is issued.

g. Agricultural mitigation fees shall be placed in a separate Agricultural Mitigation Fee account to avoid commingling of the fees with the other funds of the City of Stockton. The fees may be temporarily invested. Such fees, along with any interest earnings, shall be used solely to pay for those uses described in the Nexus Study which shall include the following:

(1) To pay for acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta].

(2) To pay for transaction costs related to the acquisition of agricultural mitigation lands.

(3) To pay for ongoing monitoring and administrative costs related to the ongoing stewardship of agricultural mitigation lands.

(4) To provide a contingency for unexpected transaction costs or future legal costs required to maintain the terms of an agricultural conservation easement.

Agricultural conservation fees may be expended by the City of Stockton or transferred to the Central Valley Farmland Trust, or other qualifying entity as determined by City Council, for the purpose of acquiring agricultural mitigation land. For funds transferred to the Central Valley Farmland Trust, or a qualifying entity, the City shall transfer such funds quarterly, provided funds are available in the Agricultural Mitigation Fee Account. It is permissible to use agricultural mitigation fees in order to obtain agricultural mitigation lands in fee simple, provided the purpose is to place an agricultural conservation easement on such lands, and make the lands available by sale for agricultural use.

h. The Agricultural Mitigation Program shall not apply to projects located in the "No Pay Zone" as established in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) compensation zone maps.

i. The specific parcel(s) containing a residential project that provides affordable housing and complies with the following (see Development Code chapter 16.40 for specific development requirements) shall be exempt from the Agricultural Land Mitigation Program:

Consist of five or more dwelling units;

Be available so that at least:

1. Twenty percent of the total number of proposed dwelling units are for lower-income household, as defined in Health and Safety Code section 50079.5; and/or
2. Ten percent of the total number of proposed dwelling units are for very low-income households, as defined in Health and Safety Code section 50105.

This exemption shall apply exclusively to the net parcel area on which the affordable housing project is located and shall not apply to any other parcels within the same subdivision, planned development, Master Development Plan, Specific Plan, or other commonly owned or planned areas.

j. Stacking of habitat easements on top of existing agricultural easements is allowable with concurrence from San Joaquin Council of Governments and the qualifying entity administering the agricultural easement.

k. Agricultural easements shall be established in perpetuity.

l. Projects that qualify to pay the in-lieu fee shall be subject to a 2.5% administration fee. In addition, agricultural mitigation fees shall not be eligible for the "Deferred Payment" option set forth in Section C.

m. The City shall report to the City Council once each fiscal year concerning the fees and accounts, including any portions of fees remaining unexpended or uncommitted five (5) or more years after deposit. The City Council shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five (5) or more years after deposit of the fee, to identify the purpose to which the fee is put, and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

A refund of unexpended or uncommitted fee revenue for which a need cannot be demonstrated, along with accrued interest may be made to the current owner(s) of the development project(s) by the City on a prorated basis. The City may refund unexpended and uncommitted fee revenue that has been found by the City Council to be no longer needed, by direct payment or by off-setting other obligations owed to the City by the current owner(s) of the development projects(s).

If the administrative costs of refunding unexpended and uncommitted revenues collected pursuant to this program exceed the amount to be refunded, City, after a public hearing, for which notice has been published pursuant to Government Code Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which the fee is collected subject to this Chapter that serves the project on which the fee was originally imposed.

## B. Place of Collection

The CDD totals the fees as determined by the appropriate departments and informs the applicant of the amounts of the total and its components. The applicant pays the SJMSCP fee directly to SJCOG, Inc. and then brings a receipt or voucher of payment to the City as proof of payment prior to the issuance of the building permit. The applicant pays all other fees simultaneously with the issuance of the permit unless the applicant qualifies for and elects to defer payment of the fees as explained below.

## C. Deferred Payment - Non-Residential

Rather than paying "development fees" at the time a building permit is issued, the developer who has qualified the project as a "qualified project" with the City Manager's Office, Economic Development Division, may elect to defer payment of all or a portion of those fees with the exception of surface water supply fee, air quality mitigation fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fees.

### 1. Definitions

a. A "qualified project" is defined as a commercial, office, or industrial/warehouse project on one parcel of land or a group of non-residential contiguous parcels under the same ownership; and

b. An "Enterprise Zone project" is any project which is within the definition above and located within the boundaries of the Enterprise Zone as existing or hereafter amended

c. "Development fees" include the following:

Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)

Wastewater Fee (S.M.C. 13.12.010)

Water Fee (S.M.C. 13.04.010)

Traffic Signal Fee (S.M.C. 16.72.140)

### 2. Deferral of Fees

a. For a "qualified project," if the total amount of "development fees" due and payable at the time of issuance of a building permit or multiple permits issued concurrently for a project exceeds \$100,000, the property owner may enter into a Deferred Payment Agreement with the City to pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner's option except that wastewater and water fees shall be paid in full within five (5) years).

b. For an "Enterprise Zone project," if the total amount of "development fees" due and payable at the time of issuance of a building permit, or multiple permits issued concurrently for a project, exceeds \$20,000, the property owner may enter into a Deferred Payment Agreement with the City for payment of any amount of "development fees" with an initial payment at time of issuance of the building permit of not less than twenty percent (20%) of those fees and the remaining eighty percent (80%) paid in equal annual installments over a period of five (5) years (or less, at the owner's election) or pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner's option except that wastewater and water fees shall be paid in full within five (5) years).

c. There is also the possibility to defer fees if the total amount of "development fees" due and payable is \$20,000 or greater but less than \$100,000 as set forth in Appendix E attached hereto and incorporated herein.

### **3. Security**

a. For a "qualified project," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment. On a case by case basis, adequate security acceptable to the City and equal to the unpaid balance may be provided.

b. For "Enterprise Zone projects," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment.

### **4. Repayment Terms**

a. Interest: The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July. For "Enterprise Zone projects" with a five (5) year or less payback period, interest shall begin to accrue on the first anniversary of the agreement.

b. Due on Transfer: The unpaid balance together with accrued interest shall be due and payable in full upon the sale or any other transfer of the property.

c. Recording and Processing Fees: All such fees shall be paid by the owner or applicant.



## 5. Processing Deferred Fee Requests

- a. For "qualified projects," and "Enterprise Zone projects," an application shall be submitted to the Revitalization Department for review, processing, and determination of eligibility.
- b. The applicant shall provide, with the application, a preliminary title report, legal description of the property, and a brief description of the project.
- c. If the project is eligible, the Revitalization Department shall prepare the agreement and security documents for review and execution. The executed documents shall be returned to the Revitalization Department for processing. Once the deferral agreement is executed by the City and the security documents have been approved and/or recorded, the Revitalization Department will issue a notice to the CDD to proceed with issuance of the building permit(s), stating the amount of fees to be collected at issuance, and deferral of the balance of the development fees.

## 6. Redevelopment Agency Deferral Authority for Nonresidential Governmental Uses/Tenancies

The Redevelopment Agency of the City of Stockton is authorized to offer additional fee deferral opportunities in connection with the redevelopment of the City's downtown for redevelopment projects involving government office uses/tenancies that meet all of the following criteria: Consist of office facilities of 25,000 square feet or greater; require a conditional use permit (i.e., for a use not permitted outright); are located along the Stockton Channel Area; and are constructed as a multiple (not single) story building. The deferral afforded the Redevelopment Agency pursuant to this provision shall allow for a deferral of up to 100% of the development fees (as defined in this section) for a maximum period of up to 55 years and shall include an option, as determined by staff on a case by case basis, of no required down payment and an interest rate as low as 0% on the deferred principal.

## D. Deferred Payment - Low/Moderate Income Residential

Rather than paying "development fees" at the time a building permit is issued, the developer, who has pre-qualified his "qualified residential project" with the Revitalization Department of the City, may elect to defer payment of all or a portion of those fees (except for the Regional Transportation Impact Fee, San Joaquin County Facilities Fee, Agricultural Mitigation Fee, Air Quality Mitigation Fee, Surface Water Supply Fee, and SJMSCP Fee).

### 1. Definitions

A "qualified residential project," as certified by the Revitalization Department, is defined as either:

a. A single-family housing project consisting of one or more homes on one or more lots within an approved subdivision under the same ownership. Single-family home projects must be sold to owner-occupied, first-time home buyers whose combined family income is equal to or less than 100% of the median income for the Stockton Metropolitan Statistical Area as contained in HUD's Section 8 Housing Program Income Limits as adjusted from time to time. The home purchase price shall not exceed the FHA limit for home mortgages without mutual mortgage insurance as adjusted from time to time.

b. A multi-family housing project consisting of any new construction project meeting the definition of a "low rent housing project" as contained in Article XXXIV of the California Constitution requiring local voter approval or any other project utilizing local, state, and/or federal funds in whole or in part in the acquisition or construction of said project.

"Development Fees" shall be defined as:

Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)

Parkland Fee (S.M.C. 16.72.160)

Traffic Signal Fee (S.M.C. 16.72.140)

Wastewater Fee (S.M.C. 13.12.010)

Water Connection Fee (S.M.C. 13.04.010)

## 2. Deferral and Repayment

Development fees for "qualified residential projects" shall be deferred during the period the project is under construction. In the case of a single-family project, fees deferred shall be collected without interest at the time permanent take-out financing is put in place as part of the closing transaction for the purchase of the home by the qualified buyer. In the case of multi-family projects, fees deferred shall be collected without interest prior to final approval of the Building Permit and issuance of a Certificate of Occupancy.

## 3. Security

All development fees deferred for "qualified residential projects" shall be secured by recorded liens or deeds of trust encumbering each lot of record involved with the project. Said liens or deeds of trust shall be recorded prior to issuance of Building Permits and shall be secondary only to deeds of trust associated with acquisition or construction financing. Full or partial reconveyance of encumbrances shall be issued by the City at the time "development fees" are paid. All document preparation and recording fees shall be paid by developer or property owner applying for the fee deferral.

#### 4. Penalty

All development fees deferred pursuant to this program shall be subject to a penalty if the single-family home projects are not sold to buyers meeting the income qualifications or if the purchase price exceeds the maximum allowed. In the case of multi-family projects, a penalty will be assessed if, following initial approval, the project is restructured so as not to meet the definition of a low rent housing project or refinanced so as not to include public funds as contained in the definition of a "qualified residential project." The penalty assessed shall be in the form of an interest payment equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July computed from the date the fee is deferred until totally repaid.

#### 5. Processing Deferred Fee Requests

Developers or owners of "qualified residential projects" shall make application for the deferment of fees to the Revitalization Department. In the case of single-family housing projects, the content of the application shall be a list of all fees applicable to the project as calculated by the CDD. In addition, the applicant shall submit a brief description of the project profiling the type of buyer expected to reside within the project. This shall include projected annual income of home buyers and projected sale prices.

For "qualified multi-family projects," the developer or applicant shall submit a project proforma and financial feasibility analysis that includes sources of all financing associated with the project; projected rents for the project; operating maintenance; and debt service costs associated with the project. The application shall also include a preliminary title report and legal description. The Revitalization Department shall review the information submitted and make a determination as to whether the project meets the criteria for a deferral of fees. For those projects meeting the above-mentioned criteria, the Revitalization Department will prepare a Development Fee Deferral Agreement along with a security document consisting of a lien or deed of trust to be executed by the applicant and returned to the City for processing. Once the deferral agreement is executed by the City and the security document has been recorded, the Revitalization Department will issue a notice to the CDD to proceed with the deferral of the development fees and the issuance of the Building Permit.

#### 6. Collection

In the case of single-family housing projects, development fees shall be collected as part of the sales transaction between developer and qualified home purchaser. Development fees shall be paid to the City out of the proceeds of the permanent take-out loan. At the time the sales transaction takes place, the developer or escrow company shall submit an appropriate document to the Revitalization Department evidencing that the proposed buyer meets the income qualifications and the purchase price of the home is within the maximum amount allowed. Evidence of satisfying this criteria will include a copy of the purchase agreement and copies of the buyer's last three years income tax returns. The Revitalization Department will review this information and make a final determination as to the buyer's eligibility. The Revitalization Department will determine whether the development fee repayment

amount will include an interest payment as a penalty and submit this demand to the escrow agent along with reconveyance documents. The escrow company will collect and remit to the appropriate demand and transmit it to the Revitalization Department for processing.

In the case of multi-family projects prior to the issuance of a Certificate of Occupancy or the placement of permanent take-out financing for the project, the developer shall submit evidence that long-term financing agreements have been executed with public entities that contain provisions and assurances that the project will remain affordable to lower-income tenants during the duration of the finance period. Upon review and approval of such documents, the Revitalization Department will calculate the appropriate repayment amount and follow the remainder of the procedures as described above.

#### **E. Refunds**

Refunds, less the administrative fee, will be made according to City procedures.

### **II. EXPENDITURES**

#### **A. Capital Improvement Program**

State law requires that development fees be imposed only when the nature of the facilities to accommodate the development has been identified and the cost of these facilities estimated. Furthermore, the City must account for the use of the funds. In order to fulfill this requirement, the City has undertaken a number of studies analyzing public facility needs and/or the need for compensation measures to offset the impacts of future development. The intent of Appendix A is to list the various types of public facilities and compensations governed by these administrative guidelines and the respective authority that established the needs for facility type. The referenced authority does include specific public facilities scheduled for partial and/or full funding by the public facilities fee as well as guidelines for use of the SJMSCP fee component of the public facilities fees.

Projects to be constructed by the City in the next five years are included in the City's Capital Improvements Program (CIP). This includes projects to accommodate new development and to cure existing deficiencies.

Beginning with the 1990-91 fiscal year, the facilities listed in Appendix A (in its updated form) will be reviewed and those projects planned for construction within five years will be included in the City's CIP budget. The City's CIP budget will also include:

1. Projects scheduled for construction by developers within the next fiscal year and funded with a combination of developer and City funds.
2. Projects which have been constructed by the developer that have City Council approved reimbursement agreements and funds have been scheduled to be paid to the developer in the next fiscal year(s) based

upon available City funding. For reimbursement purposes, the City will set aside, for each fee area and facility type, 25 percent of the fees collected (minus credits) in the prior year. Any unexpended portion of the 25 percent reimbursement set aside will be carried over for one year only.

3. Projects which have been constructed by the developer that have City Council approved reimbursement agreements for which no funds have been scheduled to be paid to the developer in the next fiscal year due to lack of funds. It is the intent of this provision that all projects that have City Council approved reimbursement agreements shall be included in the City's CIP budget and in order of priority based upon the effective date of the reimbursement agreement.

#### **B. Budgeting for Proposed Projects**

At the time that an actual appropriation for a project is requested, either during the annual budget preparation or as an appropriation during the fiscal year, the following information must be provided as part of the request:

1. To insure satisfaction of the nexus requirement, identify the proposed project as being one of the Council projects intended to be provided by the public facilities fees or, within the adopted guidelines for use of SJMSCP fees. See Appendix A.
2. Document the percentage of cost, if any, of the proposed project that is to correct existing deficiencies. Reference to an analysis that may be included as part of Appendix A would satisfy this requirement.
3. Be specific in identifying the source of funding for the proposed project. For the percentage that is approved for expenditure of public facilities fees other than SJMSCP fees, it is necessary that the facility type be identified for each portion of the appropriation. This is necessary because the revenues are being collected for each facility type and are being accounted for by specific facility type. For the percentage that is determined to correct existing deficiencies, identify specifically the other source of funds.
4. Check with the Administrative Services Department to determine if sufficient funds are available in the correct accounts for the necessary appropriations. The amount available will include the fund balance, less any amounts already appropriated or otherwise encumbered, plus estimated revenues. The CDD and Public Works Departments will provide the Administrative Services Department with projections of estimated revenues from public facilities fees by facility type and fee area.

### C. Existing Deficiencies

The adoption of the Public Facilities Fee program require the City to correct existing deficiencies. It is the intention of the City to appropriate funds each year such that at the end of each year, the cumulative appropriations will meet a defined proportion of the total cost of correcting deficiencies. This proportion shall be calculated as the ratio of the number of years after 1987-88 (the number of years the fee program has been in effect) to the 20 years through the 2007-08 fiscal year. In other words, it is the City's intention that funds to correct the deficiencies will be provided by the 2007-08 fiscal year at an approximate rate of one-twentieth each year. Existing deficiencies will be funded by general funds and/or bond issues (net of issuance costs).

### D. Developer In Lieu Improvements

New development is responsible for all public facilities that are needed as a result of new development. This includes all improvements that are required by the subdivision and public improvement ordinances or identified as being necessary to satisfy mitigation measures for the project. There may be situations where a developer will incur the cost of a facility which corrects an existing City deficiency or serves other development. Therefore, under those conditions, developers will receive a reimbursement in the form of credits or cash, plus interest at the rate equal to the 11th District Cost of Funds from the date the improvements are accepted by the City, consistent with the City Council approved reimbursement agreement. Developers dedicating the land and/or constructing these facilities will be eligible for credit/ reimbursement as outlined in these administrative guidelines. Construction costs, design costs, and fees for plan checking and inspection, etc., are eligible for credit/reimbursement.

A credit/reimbursement will be given to the developer to offset the public facilities fee for that type of facility imposed on subsequent development of the parcel. In other words, a street improvement cost will only be subject to credit/reimbursement against the street improvement fee.

The amount of credit-/reimbursement shall be as outlined below for each of the appropriate fees:

#### Libraries, Community Recreation Centers, Fire Stations, & Parks:

If the developer only dedicates the land for these facilities, it is eligible for a partial credit/reimbursement equal to the percentage of the fee that is needed to acquire the land. As an example, if 50% of the parkland fee is to acquire land for parks, a developer that dedicates the land will be eligible for a 50% credit against its parkland fee for permits within its development. The developer is also eligible to be reimbursed for 50% of the parkland fees from other developments within the service area of the park.

In the case of parkland, the value of the land dedicated shall be the value of land used to calculate the parkland fee in effect on the date the land is accepted by the City Council.

If the developer also constructs one of these facilities, it is eligible for a full credit/reimbursement of the fee for permits within its development, and reimbursement of the fees from other developments within the service area of the facility.

#### Wastewater:

The sanitary sewer connection fee is composed of the following components: (1) treatment, (2) existing collection system, and (3) future collection systems.

If the developer constructs a completely new collection system in accordance with the Master Plan, conveying wastewater from the developed parcel to the City of Stockton Wastewater Control Facility on Navy Drive, without use of any portion of the existing City sanitary sewer system, developer is eligible for a full credit/reimbursement within its development of components (2) existing collection system and (3) future collection systems, of the connection fee. The developer is also eligible for reimbursement of a portion of the fee for both existing and future collection systems from other developments within the service area of the collection system improvements.

If the developer connects to the existing collection system and installs mains in accordance with the Master Plan, developer is eligible for a full credit/reimbursement within its development of component (3) of the connection fee-future collection systems. The developer is also eligible for reimbursement of a portion of the fee for future collection systems from other developments within the service area of the collection system improvement.

In no case will the reimbursement authorized under this section of the Administrative Guidelines exceed the cost of the eligible sanitary sewer improvements constructed by the developer.

#### Water:

If the developer constructs a portion of the water system in accordance with the Master Plan, it is eligible for a full credit/reimbursement within its development for the fee for that portion of the cost which represents water transmission mains installed which exceed the requirements of the individual development as determined by the City. The developer is also eligible for reimbursement in accordance with the City's Water Rates and Regulations.

#### Street Improvements:

If the developer constructs a portion of the street improvements within and adjacent to its project which are covered by the fee, it is eligible for a 50%

credit/reimbursement on building permits within its development until the full cost of the improvements have been recovered. The 50% credit is necessary since only approximately 33% of the total street improvements covered by the fee are adjacent to or within undeveloped properties. The remaining improvements are freeway-related improvements, railroad grade separations, and street improvements adjacent to developed properties. Without the City retaining 50% of the fees, sufficient revenue would not be generated to fund the necessary freeway, railroad grade separations, and street improvements adjacent to developed properties.

If the developer constructs a portion of the street improvements outside and not adjacent to its development, it is eligible for a 100% credit/reimbursement on building permits until the full cost of the improvement has been recovered.

Refer to Appendix B for specifics on reimbursements for developer constructed street improvements. Also, refer to Appendix C on the procedures to be followed where past developments made significant street improvements and the development is not completely built out.

The developer shall submit a detailed cost breakdown of the public facilities to be constructed and/or the land to be dedicated for the public facilities. The cost breakdown shall also include the timing of the various improvements. In addition, the developer shall submit a yearly schedule of projected building permits through full build-out of the project. The developer shall enter the projected building permits, applicable fees, cost breakdown, interest and the proposed spread of credits/reimbursements into a spreadsheet compatible with City-used software.

The spreadsheet shall be reviewed and approved by the Public Works Department. Upon approval, the developer shall provide a copy of the spreadsheet compatible with City-used software. The spreadsheet shall be updated by the developer and reviewed and approved by the Public Works Department at least once a year. The value of the land and improvements shall not be adjusted for inflation or deflation, but the applicable fees shall be adjusted to the current fee and projected ahead in constant dollars.

The City shall enter into a credit/reimbursement agreement with the developer. The agreement shall provide for the credit/reimbursement to the developer from fees generated within the project and citywide. The timing and method of payment (credit/reimbursement) will be negotiated and included as part of the subdivision agreement or as approved by the City Council when the improvements are accepted. If the improvements are financed by an assessment district (including Mello-Roos), credits may be given to the individual property owner and/or reimbursement shall be made to the district. The proposed spread of credits/reimbursement must also be approved by the City Council prior to the subdivision improvements being accepted by the City Council.

If the credit/reimbursement agreement is submitted for approval by the City Council prior to the installation of the improvements, the costs will be based upon estimates. Upon completion of the improvements, the credit/ reimbursement agreement will be



resubmitted to the City Council for approval prior to subdivision improvements being accepted.

If the developer has pulled building permits and paid public facility fees prior to the credits/reimbursement agreement being approved by the City Council, the developer will only receive credits/reimbursements on future permits. No refunds will be processed for the fees paid prior to the credit/reimbursement agreement being approved by the City Council.

When the various fees are adjusted by the City Council, the total amount to be credited/reimbursed does not change, but the amount of credit/reimbursement to be applied to an individual building permit will be adjusted. For example, if a fee was originally \$1000 and the developer receives a 50% credit or reimbursement, when the fee increases to \$1100, the developer will still receive a 50% credit or reimbursement but it will be \$550 versus the original \$500.

The developer has the option, to be determined at the time of the reimbursement agreement, of receiving credits when the building permits are issued or accumulating these credits and receiving a lump sum reimbursement at the end of each quarter, based upon claims made by the developer.

#### E. Use of Administrative Funds

The funds in the administrative account are not used for studies and/or administration for specific improvements or types of improvements. Such expenses are charged to the account for that type of facility, i.e., a traffic analysis charged to the Street Improvements accounts. However, administrative funds may be used for planning studies, such as a City initiated general plan revision. The funds in the administrative account are not used to cover the cost of reviewing projects; nor are funds from any other fee account used for this purpose. The funds may be used for both consultant and staff costs. Staff costs are calculated based on time card entries.

### III. ANNUAL REPORT

#### A. Fiscal Year Summary

An annual report on the development fee program is prepared. The first portion of the report, the fiscal year summary, is prepared reasonably soon after the end of the fiscal year, as accounting information becomes available. This portion of the report includes the following information.

1. Account Balances - The information includes fiscal year revenues and the accumulated balance for each account.

2. Improvements - The report includes, for each account and subaccount, except the SJMSCP Account, the following: the constructed improvements and a projection of the funds to be collected in each of the next five years; when the next project (or projects) will be able to be funded; and the proposed projects to be undertaken in the

next five years. The latter information is in a form appropriate for integration into the Capital Improvements Program. For the SJMSCP Account, the annual report will be provided by SJCOG, Inc.

3. **Administration Fund** - The revenues to the administration account are compared with the administration expenses incurred, both for the past fiscal year and for an appropriate longer period of time. Both future projected revenues and expenses are also included in the report, along with a recommendation either to retain the current level of administrative component of the fee, or to adjust it up or down.

4. **Existing Deficiencies** - The expenditures to cure existing deficiencies are set forth, both for the fiscal year and cumulatively. These expenditures are compared with the commitment to cure existing deficiencies on at least a pro rata basis between 1988 and the present.

5. **Reimbursement Agreements** - The report includes, for each agreement, the following: the constructed improvements; the total cost of the improvement including land; all accrued interest; the outstanding balance; and the projected credit/reimbursement and source of revenue.

## B. **Fee Review and Adjustment**

The second portion of the annual report is prepared three or four months before the start of the calendar year. This report is submitted to the City Council along with recommendations so that action can be taken no later than 60 days before the start of the calendar year, allowing the adjusted fees to become effective on or about January 1. This portion of the report includes the following information.

1. **Inflation Adjustments** - The report presents information on the inflation rate during the prior calendar year as determined by the construction cost index of the Engineering News Record publication. The rate of inflation (or deflation) is applied to the fees to determine the fees for the subsequent year. A land cost index will be used to adjust the land cost portion of the fees.

2. **Reimbursement Agreements Adjustments** - The report presents information on the credits/reimbursements due developers for the subsequent year. Since the developers are eligible for credits/reimbursements plus interest, the fees shall be adjusted to cover this additional expense.

3. **Special Studies or Information** - From time to time, new information will be come available regarding the facilities needed to accommodate new development and their cost. If this information is different from that upon which the fees are currently based, the information should be documented along with calculations that determine the appropriate new fee level.

4. Findings - The report sets forth findings suitable for adoption by the City Council determining that, except for the adjustments listed, the prior findings on which the current fees are based are still sufficiently accurate.

Adopted Feb. 12, 1991 (Resolution No. 91-0119);  
Amended Jan. 23, 2007 (Resolution No. 07-0040);  
Amended \_\_\_\_\_ (Resolution No. \_\_\_\_-\_\_\_\_).

**AGREEMENT**  
**COMMERCIAL REHABILITATION LOAN PROGRAM**  
**FACADE IMPROVEMENT FORGIVABLE LOAN**

**(\$19,975.00)**

This Agreement (the "Agreement") is made as of this thirtieth day of August, 2018 by and between the City of Stockton (the "**CITY**"), a municipal corporation, and The Open Window Project, a limited liability company, ("the **BORROWER**").

**RECITALS**

A. **CITY** wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. **BORROWER** wishes to receive from **CITY** and **CITY** wishes to extend to **BORROWER** funds to support the rehabilitation of property located at 630 East Weber Avenue, Stockton, CA hereinafter referred to as the "**PROPERTY**."

C. As a condition of receiving the funds, **BORROWER** shall execute, among other things, this **AGREEMENT**, a promissory note, and a deed of trust, which deed of trust shall be recorded against the **PROPERTY**. These instruments are intended to secure **CITY'S** continuing interest in the condition of the **PROPERTY**, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, **BORROWER** and **CITY** hereby agree as follows:

**ARTICLE 1. DEFINITIONS**

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.

1.1 "**AGREEMENT**" means this agreement entered into between the **CITY** and **BORROWER**.

1.2 "**NOTE**" (the **NOTE**) is that certain promissory note in the total principal amount of Nineteen Thousand Nine Hundred Seventy Five Dollars and 00/100 (\$19,975.00) to be executed by **BORROWER** in favor of the **CITY**, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments

thereto, modifications thereof or restatements thereof. The terms of the **NOTE** are hereby incorporated into this Agreement by this reference.

1.3 "**CITY**" means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 "**COMMENCEMENT OF REHABILITATION**" means the time **CONTRACTOR** begins physical rehabilitation work on the **PROJECT** at the **PROPERTY**, including site preparatory work, beyond maintenance of the **PROPERTY** in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 "**CONTRACTOR**" is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board. **DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION:** This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450- 16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District's Labor Compliance Consultant for review.

1.6 "**DEED OF TRUST**" is the deed of trust, assignment of rents, and security agreement placed on the **PROPERTY** as security for the assistance by **BORROWER** as trustor with the **CITY** as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 "**DOCUMENTS**" are collectively this **AGREEMENT**, the **DEED OF TRUST**, and the **NOTE** as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 "**HAZARDOUS MATERIALS**" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project,

to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 **"PROPERTY"** consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached Exhibit "A," which is incorporated into this Agreement by this reference.

1.10 **"PROJECT"** is the rehabilitation work as itemized in the attached **Exhibit "B,"** which is incorporated into this Agreement by this reference.

## **ARTICLE 2. TERMS OF ASSISTANCE**

2.1 **ASSISTANCE.** The **CITY** agrees to provide the funds to **BORROWER** under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by **BORROWER** to pay for eligible costs associated with the **LOAN**.

2.2 **AMOUNT OF ASSISTANCE.** On and subject to the terms and conditions of the Documents, **CITY** agrees to offer and **BORROWER** agrees to accept the assistance in the total amount not to exceed Nineteen Thousand Nine Hundred Seventy-Five Dollars and 00/100 (\$19,975.00) evidenced by the **NOTE**. Said **NOTE** shall be secured by the Deed of Trust recorded against the **PROPERTY**.

2.3 **INTEREST RATE OF ASSISTANCE.** The funds loaned to **BORROWER** for the rehabilitation of the **PROJECT** shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 **TERM.** The term for the **LOAN** shall be a maximum of six (6) years, upon forgiveness of the loan; or payment in full.

2.5 **FORGIVENESS OF LOAN.** **CITY** shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing **BORROWER** fully complies with all specific program terms and conditions as described in this Agreement. **CITY** shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 **PREPAYMENT.** Prepayment of any outstanding loan balance shall be permitted under the terms of this **AGREEMENT** without penalty to the **BORROWER**.

2.7 **RELEASE OF LIEN.** **CITY** shall, upon loan forgiveness in entirety or receipt of payment in full from the **BORROWER**, execute and deliver to **BORROWER**, a deed of reconveyance. **BORROWER** shall pay all fees associated with the recording of the deed of reconveyance.

2.8 **USE OF FUNDS.** Loan funds may be used only for the Eligible costs associated with the **LOAN** as well as any revisions to the **PROJECT** Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the **CITY**.

2.9 **BORROWER FUNDS. BORROWER** shall at or prior to the execution of this **AGREEMENT**, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of **BORROWER's** choice in the amount necessary to perform all the rehabilitation work not covered by the subject **CITY** loan; or deposit equity funds with **CITY** in the amount necessary to perform all the rehabilitation work not covered by the subject **CITY** loan.

2.10 **ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER** shall reimburse **CITY** for the cost of architectural fees paid by the **CITY** in the event of cancellation of the **LOAN**.

### **ARTICLE 3. DISBURSEMENT**

3.1 **DISBURSEMENT OF PROCEEDS.** Disbursement of all proceeds for the **PROJECT** shall be made by the **CITY** upon presentation of approved invoices. Once invoices for payment have been received, **CITY** shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the **CITY**. **CITY** loan funds will be disbursed only after all **BORROWER** funds have been disbursed for the **PROJECT**.

3.2 **TITLE. BORROWER** warrants that it will maintain good and marketable title to the **PROJECT**.

### **ARTICLE 4. DEVELOPMENT OF PROPERTY**

4.1 **CONFIGURATION OF THE PROPERTY.** The **BORROWER** may, by contract, require the **CONTRACTOR** to rehabilitate the **PROPERTY** pursuant to current building codes as they apply to a commercial structure by contract, as well as to **BORROWER** requirements. At a minimum, **CONTRACTOR** shall perform all rehabilitation by contract.

4.2 **COMMENCEMENT OF REHABILITATION.** The contract shall require that **CONTRACTOR** begin rehabilitation of the **PROPERTY** no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 **SCHEDULING AND EXTENSION OF TIME.** It shall be the responsibility of **CONTRACTOR** to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. **CITY** may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to **CONTRACTOR** to enable **CONTRACTOR** to complete the work shall not constitute a waiver of any other rights of **CITY** under the Agreement.

4.4 **QUALITY OF WORK.** **CONTRACTOR** shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the **PROPERTY**. **CONTRACTOR** shall develop the **PROJECT** in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 **ADDITIONS OR CHANGES IN WORK.** **CITY** shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release **BORROWER** from any other obligations in the Agreement.

4.6 **RECORDS.** **BORROWER** shall be accountable to **CITY** for all funds disbursed to **CONTRACTOR** pursuant to the Agreement and **CITY** agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the **PROJECT**.

**CITY** shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. **CITY** shall promptly supply any and all information and documentation which involves the **PROJECT** and cooperate with **BORROWER** in the rehabilitation of the **PROJECT**.

4.7 **INSPECTIONS.** **BORROWER**, by contract, shall permit and facilitate, and require its **CONTRACTOR** to permit and facilitate, observation and inspection at the job site by **CITY** and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 **REHABILITATION RESPONSIBILITIES.** **BORROWER** shall be solely responsible for all aspects of conduct in connection with the **PROJECT**, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by **CITY** with reference to the **PROJECT** is solely for the purpose of determining whether **BORROWER** is properly discharging its obligations to **CITY**, and should not be relied upon by **BORROWER** or by any third parties as a warranty or representation by **CITY** as to the quality of the rehabilitation of the **PROJECT**.

4.9 **TRANSFER OF PROPERTY.** The **LOAN** can be assumed or be subordinated, however, **BORROWER** shall not make or create, and shall not, prior to the completion of the **PROJECT** and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the **PROJECT**, or the **PROPERTY**, or any part thereof, including the sale of any interests of **BORROWER** without prior notice to **CITY**. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to **CITY**.



4.10 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the **PROPERTY** or a stop notice affecting the **PROJECT** is served on **CITY** or other third party in connection with the **PROPERTY**, **CONTRACTOR** shall, within 20 days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to **CITY** a surety bond in sufficient form and amount, or provide **CITY** with other assurance satisfactory to **CITY** that the claim of lien or stop notice will be paid or discharged.

If **CONTRACTOR** fails to discharge bond or otherwise satisfy **CITY** with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, **CITY** may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at **BORROWER'S** expense. Alternatively, **CITY** may require **CONTRACTOR** to immediately deposit with **CITY** the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. **CITY** may use such deposit to satisfy any claim or lien that is adversely determined against **CONTRACTOR**.

4.11 **BARRIERS TO THE DISABLED.** The **PROJECT** shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 **FEES, TAXES, AND OTHER LEVIES.** **BORROWER** shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the **PROPERTY** or the **PROJECT**, and shall pay such charges prior to delinquency.

4.13 **DAMAGE TO PROPERTY.** To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by **CITY**, if any building or improvement on the **PROPERTY** is damaged or destroyed by an insurable cause, **BORROWER** shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, **BORROWER** shall make up the deficiency.

4.14 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the **PROJECT** or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the **PROJECT** must be completed no

later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

## **ARTICLE 5. NONDISCRIMINATION.**

5.1 **NONDISCRIMINATION.** **BORROWER** shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the **PROPERTY** on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. **BORROWER** shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

## **ARTICLE 6. EMPLOYMENT**

6.1 **EQUAL EMPLOYMENT OPPORTUNITY.** **BORROWER** and any contractors, subcontractors, and professional service providers for the **PROJECT** shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the **PROJECT**.

6.2 **ENFORCEMENT OF EMPLOYMENT REQUIREMENTS.** In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by **BORROWER** or by any contractor or subcontractor employed on the **PROJECT, CITY**, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars (\$1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by **CITY**; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

**BORROWER** shall monitor and cooperate with **CITY** in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that **BORROWER** fails to monitor or enforce these requirements against any contractor or subcontractor, **CITY** may withhold payments to **BORROWER**, may impose liquidated damages on **BORROWER** in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law,

and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

## **ARTICLE 7. INDEMNITY AND INSURANCE**

**7.1 INSURANCE COVERAGE.** **BORROWER** shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the **CITY**. In addition, **CITY** shall ensure that the general contractor for the **PROJECT** maintains the insurance coverage specified by law.

**7.2 INSURANCE ADVANCES.** In the event **BORROWER** fails to maintain the full insurance coverage required by this Agreement, **CITY**, after at least seven (7) business days prior written notice to **BORROWER**, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by **CITY**, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of **BORROWER** to **CITY** and shall be secured by the Deed of Trust.

**7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** **CITY** shall not be personally liable to **BORROWER** for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

**7.4 INDEMNITY.** Except for the sole negligence of the **CITY**, the **BORROWER** undertakes and agrees to defend, indemnify, and hold harmless **CITY** from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the **BORROWER'S** or any contractor or subcontractor of borrower or on the **PROPERTY** or the **PROJECT**, whether or not contributed to by an act or omission of the **CITY**. **BORROWER** shall pay immediately upon **CITY'S** demand any amounts owing under this indemnity. The duty of **BORROWER** to indemnify includes the duty to defend **CITY** or, at **CITY'S** choosing, to pay **CITY'S** costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the **PROPERTY** or the **PROPERTY**. **BORROWER'S** duty to indemnify **CITY** shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

**7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION.** In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such **PROPERTY** or any part thereof, such event shall not constitute a default under the Agreement and the **BORROWER** shall have the right to rebuild the affected **PROPERTY**, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by **BORROWER** from other sources, are sufficient to rebuild the affected **PROPERTY** in a manner that provides adequate security to the **CITY** for

repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

## **ARTICLE 8. HAZARDOUS MATERIALS**

**8.1 NOTIFICATION TO CITY. BORROWER** shall immediately notify **CITY** in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the **PROPERTY** requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by **BORROWER'S** (after verification of the veracity of such knowledge to **BORROWER** reasonable satisfaction) that the **PROPERTY** does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by **BORROWER** of any occurrence or condition on the **PROPERTY** or on any real property located within 2,000 feet of the **PROPERTY** that could cause the **PROPERTY** or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

**8.2 USE AND OPERATION OF PROPERTY.** Neither **BORROWER**, nor any agent, employee, or contractor of **BORROWER**, nor any authorized user of the **PROPERTY** shall use the **PROPERTY** or allow the **PROPERTY** to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. **BORROWER** shall comply and cause the **PROJECT** to comply with Hazardous Materials Laws.

**8.3 REMEDIAL ACTIONS.** If **BORROWER** has actual knowledge of the presence of any Hazardous Materials on or under the **PROPERTY**, **BORROWER** shall immediately take, at no cost or expense to **CITY**, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to **BORROWER'S** right of contest below.

**8.4 RIGHT OF CONTEST. BORROWER** may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by **BORROWER** in good faith, (b) **BORROWER** promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by **CITY**, **BORROWER** deposits with **CITY** any funds or other forms of assurance **CITY** in good faith from time to time determines appropriate to protect **CITY** from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by **BORROWER** under the conditions of this Section 8.4.

8.5 **ENVIRONMENTAL INDEMNITY.** **BORROWER** shall defend, indemnify, and hold **CITY** from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that **CITY** may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not **BORROWER'S** knew of same) of any Hazardous Materials occurring prior to or during **BORROWER** use of the **PROPERTY**.

## **ARTICLE 9. DEFAULT AND REMEDIES**

9.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) **BORROWER'S** failure to pay when due any sums payable under, the **NOTE** or any advances made by **CITY** under the Deed of Trust or this Agreement; (2) **Borrower's** use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) **BORROWER'S** failure to obtain and maintain the insurance coverage required under this Agreement; (4) **BORROWER'S** failure to make any other payment or assessment due under the Agreement; and (5) **BORROWER'S** default in any other financing of the **PROJECT**.

B. Rehabilitation. (1) **CONTRACTOR'S** substantial deviation in the work of rehabilitation specified in the Scope of Work, without **CITY'S** prior written consent; (2) **CONTRACTOR'S** use of defective or unauthorized materials or defective workmanship in rehabilitating the **PROJECT**; (3) **CONTRACTOR'S** failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the **PROJECT** for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the **PROJECT** that gives **CITY** reasonable cause to believe that the **PROJECT** cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the **PROPERTY** or service on **CITY** of any stop notice relating to the **PROJECT** and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) **CONTRACTOR'S** failure to remedy any deficiencies in record keeping or failure to provide records to **CITY** upon **CITY'S** request; (8) **BORROWER'S** failure to substantially comply with any federal, state, or local laws or **CITY** policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by **BORROWER** of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by **BORROWER** of any material obligations on **BORROWER** imposed by any other agreements with respect to the financing, development, or operation of the **PROPERTY** or the **PROPERTY**, whether or not **CITY** is a party to such agreement.

E. Representations and warranties. A determination by **CITY** that any of **BORROWER** representations or warranties made in the Loan Documents, any statements made to **CITY** by **BORROWER**, or any certificates, documents, or schedules supplied to **CITY** by **BORROWER** were untrue in any material respect when made, or that **BORROWER** concealed or failed to disclose a material fact from **CITY**.

F. Damage to PROPERTY. Material damage or destruction to the **PROPERTY** by fire or other casualty, if **BORROWER** does not take steps to reconstruct the **PROPERTY** to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. **BORROWER** or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the **NOTE** shall be considered a default as to each obligation.

9.2 **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.** For Events of Default which are not exclusively monetary, **CITY** shall give written notice to **BORROWER** of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the **BORROWER** fails to take corrective action to cure the default within the time specified, the **CITY** will seek remedies to accelerate the Agreement as well as any monies advanced to **BORROWER** by **CITY**.

9.3 **CITY'S REMEDIES.** Upon the happening of an Event of Default by **BORROWER** and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), **CITY'S** obligation to disburse funds shall terminate, and **CITY** may also, in addition to other rights and remedies permitted by the

Agreement or applicable law, proceed with any or all of the following remedies in any order or combination **CITY** may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the **NOTE**, as well as any other monies advanced to **BORROWER** by **CITY** including administrative costs, shall immediately become due and payable at the option of the **CITY**;

B. Bring an action in equitable relief: (1) seeking the specific performance by **BORROWER** of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding **CITY** from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by **BORROWER**.

9.4 **BORROWER REMEDIES.** Upon the fault or failure of **CITY** to meet any of its obligations under the Agreement, **BORROWER** may:

A. Demand payment from **CITY** of any sums due **BORROWER**;

B. Bring an action in equitable relief seeking the specific performance by **CITY** of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

## **ARTICLE 10. GENERAL PROVISIONS**

10.1 **GOVERNING LAW.** The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 **STATUTORY REFERENCES.** All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 **ATTORNEYS' FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 **TIME.** Time is of the essence in this Agreement.

10.5 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of **CITY** or **BORROWER** required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 **RELATIONSHIP OF PARTIES.** The relationship of **BORROWER** and **CITY** for this **PROPERTY** under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. **CITY** neither undertakes nor assumes any responsibility or duty to **BORROWER** (except as provided for herein) or any third party with respect to the **PROPERTY**, the **PROPERTY**, or the Agreement. Except as **CITY** may specify in writing **BORROWER** shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 **WAIVER.** Any waiver by **CITY** of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by **CITY** to take action on any breach or default of **BORROWER** or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to **BORROWER** to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by **CITY** to any act or omission by **BORROWER** shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for **CITY'S** written consent to future waivers.

10.8 **INTEGRATION.** This Agreement and the other Loan Documents, including exhibits, executed by **BORROWER** for the **PROPERTY**, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 **OTHER AGREEMENTS.** **BORROWER** represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. **BORROWER**



shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by **CITY** in writing.

**10.10 AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both **BORROWER** and **CITY**.

**10.11 SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):**

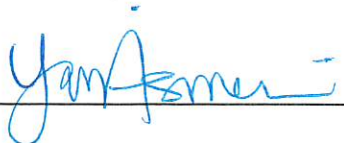
By: 

Print Name: Zachary Cat

Title: Owner

**APPROVED AS TO FORM:**


John M. Luebberke  
City Attorney

By: 

**APPROVED BY:**

  
Laurie Montes  
Deputy City Manager

**ATTEST:**  
CLERK OF THE CITY OF STOCKTON

By: 

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

APN: 149-180-03

Lots 7 and 9 in Block 7, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

## **Exhibit "B"**

### **Description of Work**

(See attached)



**Contract of Service**



8714 Thornton Road  
Stockton, CA 95209  
(209) 474-6653 Fax: (209) 474-1622

DIV. OF GRUETTNER ENTERPRISES, INC.  
PETER GRUETTNER  
LIC. NO. 727529

Proposal submitted: 08/13/2018 to: Cynthia

Work to be performed at:

Name: The Sycamore 10, LLC  
Address: 110 N San Joaquin Street, 5<sup>th</sup> Floor, Stockton  
Phone: 209-469-2678 Ext 304

Name: The Sycamore  
Address: 630 E Weber Avenue, Stockton  
Phone:

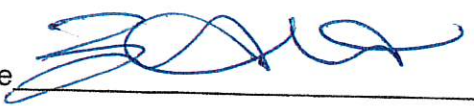
Remove and install (6) openings. Install new storefront system 2 x 4 1/2 bronze anodized.  
1 pair of 3/0 x 7/0 doors and transom glass. 1 3/0 x 7/0 single door  
All labor in compliance with Davis Bacon prevail wages

Total price installed - \$29,950.00

Respectfully submitted,

Kris Long

Agreed and Accepted by:

Signature   
Zac Cort, Manager

Signature   
Peter Gruettner

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Stockton  
Economic Development Department  
425 N. El Dorado Street  
Stockton, CA 95202

Attn: A. Abella

CRF 171

APN: 149-180-03

No Fee Document Government Code § 27383

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) **“Deed of Trust”** means this document, which is dated August 30, 2018, together with all Riders to this document.

(B) **“Borrower”** is The Open Window Project, LLC. Borrower is the trustor under this Deed of Trust.

(C) **“Lender”** is City of Stockton, a municipal corporation. Lender’s address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) **“Trustee”** is City of Stockton, a municipal corporation.

(E) **“Note”** means the promissory note(s) signed by Borrower and dated August 30, 2018. The Note(s) states that Borrower owes City Nineteen Thousand Nine Hundred Seventy-Five Dollars and 00/100 (\$19,975.00). Borrower has promised to pay this debt in full not later than August 30, 2024.

(F) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”

(G) **“Loan”** means the debt evidenced by the Note, plus all sums due under this Deed of Trust.

(H) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) **“Miscellaneous Proceeds”** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) **“RESPA”** means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(K) **“Successor in Interest of Borrower”** means any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Note and/or this Deed of Trust.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower’s covenants and agreements under this Deed of Trust and the Note. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit “A”

Which currently has the address of 630 East Weber Avenue, Stockton, California 95202 (“Property Address”)

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the “Property.”

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal.** Borrower shall pay when due the principal of the debt evidenced by the Note and any additional amounts due under the Note. Payment due under the Note and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Note and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date.

**3. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

**4. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or



repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Deed of Trust, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Deed of Trust whether or not then due.

#### **5. Preservation, Maintenance and Protection of the Property; Inspections.**

Borrower shall not destroy damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**6. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the property as Borrower's place of business.

**7. Protection of Lender's Interest in the Property and Rights Under this Deed of Trust.** If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

**8. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender

shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the

liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**10. Joint and Several Liability; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower's obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

**11. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**12. Notices.** All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower

shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

**13. Governing Law; Severability; Rules of Construction.** This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**14. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Deed of Trust.

**15. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

**16. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the

Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Deed of Trust, and Borrower's obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

**17. Hazardous Substances.** As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower

learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**18. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

**19. Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

**20. Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

Property Owner(s):

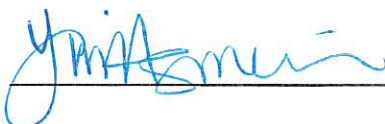
BY: 

Print Name: Zachary Cort

Title: Owner

Date: 8.29.18

APPROVED AS TO FORM:  
JOHN M. LUEBBERKE  
CITY ATTORNEY

BY: 



# EXHIBIT "A"

## LEGAL DESCRIPTION

APN: 149-180-03

Lots 7 and 9 in Block 7, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Joaquin )

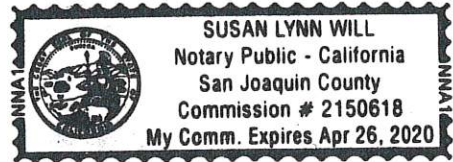
On August 29, 2018 before me, Susan Lynn Will, Notary Public  
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Susan Lynn Will* (Seal)



**FACADE IMPROVEMENT LOAN PROGRAM  
PROMISSORY NOTE**

**CRF 171**

FOR VALUE RECEIVED, the undersigned (the "BORROWER") promises to pay to the order of the City of Stockton (the "LENDER") or its successors, the principal sum of **Nineteen Thousand Nine Hundred Seventy-Five Dollars and 00/100 (\$19,975.00)** with interest at the rate of ten percent (10%) in annual installments from the **30<sup>th</sup> day of August, 2018** and continuing every year until the principal balance has been paid.

All principal and interest shall be payable at City of Stockton, or at such other place as shall be designated by LENDER.

This Note evidences a loan by LENDER to BORROWER for the sole and exclusive purpose of rehabilitating, preserving and/or enhancing commercial real estate located at and commonly known as (the "PROJECT"):

**PROJECT SITE ADDRESS      630 East Weber Avenue  
Stockton, CA 95202**

This Note is secured by a Deed of Trust of even date herewith in favor of LENDER, as beneficiary, on the above-referenced PROJECT.

The parties hereto have entered into a Facade Improvement Forgivable Loan Agreement of even date herewith under the City of Stockton Commercial Rehabilitation Loan Program (the "Agreement"). The Agreement contains various terms and conditions upon which LENDER has conditioned forgiveness of the loan evidenced by this Note.

The term of this Note shall be until the balance due is paid in full, or a period ending on the **thirtieth day** of the month first occurring six (6) years from the date of the deed of trust and after the completion of the PROJECT rehabilitation, preservation, or enhancement activities financed in whole or in part by the loan evidenced by this Note. Unless prepaid, this Note shall be satisfied and be released by LENDER on the **thirtieth day of August 2024**. The anniversary of this Note shall be the **thirtieth day of August** in each year following the completion of activities financed by the Loan evidenced by the Note.

2018-09-10-5001 P

At each anniversary date on which LENDER determines that BORROWER has satisfied the terms and conditions of the Agreement, LENDER shall reduce the balance due hereunder by twenty (20) percent of the original amount of the Note. LENDER shall waive and forgive any interest accrued under the terms and conditions of this Note since the previous anniversary date providing BORROWER is found to be eligible for said reduction. During the term of this Note, BORROWER shall make no payments of principal or interest.

In the event of any transfer, sale or assignment of the real property or any interest therein, the entire balance of the principal and interest shall become immediately due and payable. Solely at the option of LENDER, this Note may be assigned, subordinated and/or assumed, providing that any and all terms and conditions shall remain in full force and effect and such assignee or successor shall assume in writing all duties and obligations of BORROWER. Any successor(s) to or assignee(s) of BORROWER shall execute and deliver to LENDER a Deed of Trust on the PROJECT to secure repayment of said Note.

In the event of any default by the undersigned, the unpaid principal amount of the Note, together with interest, shall become immediately due and payable, at the option of LENDER without notice to the undersigned. Failure of LENDER to exercise such option shall not constitute a waiver of any default.

If suit is instituted by LENDER to enforce or recover on this Note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney's fees and court costs.

Any forbearance by LENDER with respect to any of the terms and conditions of this Note shall in no way constitute a waiver of any of LENDER'S rights or privileges. Any written notice or payment of one party to the other shall be addressed to the parties as follows:

LENDER: City of Stockton  
Economic Development Department  
400 E. Main Street, 4<sup>th</sup> Floor  
Stockton, CA 95202

BORROWER: The Open Window Project, LLC  
115 N. Sutter Street #308  
Stockton, CA 95205

This Note shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

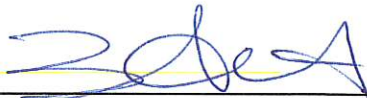
BORROWER reserves the right to prepay at any time all or any part of the remaining balance of this Note without the payment of penalties or premiums.

If any term of this note conflicts with any term or provision of the Agreement, the terms and provisions of the Agreement shall control to the extent of such conflict.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of its date.

Dated: 8-29-18

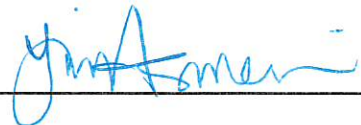
BORROWER:

BY: 

Print Name: Zachary Cox

Title: Owner

APPROVED AS TO FORM:  
JOHN M. LUEBBERKE  
CITY ATTORNEY



MEMORANDUM

August 13, 2018

TO: Laurie Montes, Deputy City Manager  
City Manager's Office

FROM: Micah Runner, Director  
Economic Development Department

SUBJECT: **FAÇADE IMPROVEMENT FORGIVABLE LOAN**  
**THE SYCAMORE – 630 E. WEBER AVENUE**

Attached are loan documents for a Façade Improvement Forgivable Loan to The Open Window Project, LLC for the property located at 630 E. Weber Avenue in the amount of \$19,975. The Open Window Project, LLC will be contributing \$9,975 towards the project for a total project cost of \$29,950. Improvements include the removal and installation of storefront system, doors and transom glass.

The Façade Improvement Forgivable Loan Program assists property owners in making exterior improvements to commercial property. The program is funded with Community Development Block Grant funds. Funds are granted in the form of a loan, with a lien placed on the property, which is forgiven after five years if the property is kept free of graffiti and blight.

The program was originally adopted by the City Council in 1988 and later revised in 1999 to allow larger properties the ability to receive additional financial assistance in improving their façade. The Façade Improvement Forgivable Loan Program was further revised by the City Council in July 2007, to expand the program boundary beyond the downtown core and increase funding available to commercial property owners. The maximum funding allowed per property under the existing project is \$100,000.

For every 50 lineal feet of building frontage, a property is eligible for a \$10,000 base grant. In order to qualify for more than one base grant, the property owner must contribute at least \$5,000 (a maximum of \$10,000) in matching funds for each additional base grant obtained. This Façade loan has one \$10,000 base grant, and matching funds between the property owner and the City of Stockton.

**FAÇADE IMPROVEMENT FORGIVABLE LOAN**  
**THE OPEN WINDOW PROJECT – 630 E. WEBER AVENUE**  
**Page 2**

The following table illustrates the breakdown of funding for this project:

	<b>CITY FUNDS</b>	<b>PROPERTY OWNER FUNDS</b>	<b>TOTAL PROJECT COST</b>
<b>Base Grant</b>	\$10,000	-	\$10,000
<b>Matching Funds</b>	\$9,975	\$9,975	\$19,950
<b>TOTAL</b>	<b>\$19,975</b>	<b>\$9,975</b>	<b>\$29,950</b>

If you have additional questions, please contact me at extension 8694.



*602* MICAH RUNNER, DIRECTOR  
ECONOMIC DEVELOPMENT DEPARTMENT

MR:JM:AA  
Attachments (3)

RECEIVED

City Manager Date Received AUG 5 9 2018

# CONTRACT ROUTING FORM

City Clerk Date Received SEP 10 2018

City of Stockton  
City Manager's Office

Contract Number 2018-09-10-S001 P  
(For Clerk's Use)

**CITY CONTRACT TYPE (select one)**

Original    Amendment/Change Order    Grant  
 Subdivision Agreement    Other \_\_\_\_\_

**CONTRACT INFORMATION**      Contract Amount: \$ 19,975

Contract Title: Facade Improvement Forgivable Loan-630 E. Weber Ave.  
Vendor/Other Party: The Open Window Project, LLC  
Contract Start Date: 9/30/2018      Contract End Date: 9/30/2024      Contract Term: \_\_\_\_\_

**COUNCIL APPROVAL REQUIRED?**    Yes    No (provide account # if no) 054-8521-640-2051

Council approval required for contracts over \$ 75,000 for FISCAL YEAR: 1819  
Motion/Resolution/Ordinance No: \_\_\_\_\_      Must be Attached

**REQUIRED DOCUMENTS** (The following documents shall be submitted with the signed contract when required):

Business License Required?    Yes    No      Business License No. \_\_\_\_\_  
Bonds Required?                     Yes    No  
Insurance Required?                 Yes    No  
Notary Required?                     Yes    No      Recordation Required?       Yes    No

↓ **Mandatory Routing Order**

**1 DEPARTMENT:** Economic Development Department

DEPARTMENT HEAD APPROVAL [Signature] date: 8/9/18  
Project Mgr: Angelina Abella ext: 8059      Staff: Amanda Thomas ext: 7540  
Forwarded to: procurement on: 8/10/18 by: a.thomas

**2 PROCUREMENT**

Approved (  ) Name/Signature: [Signature]  
Forwarded to: Matt/Risli on: 8/14/18 by: TH

**3 VENDOR/OTHER PARTY**

Signed (  ) originals on: \_\_\_\_\_  
Forwarded to: \_\_\_\_\_ on: \_\_\_\_\_ by: \_\_\_\_\_

**4 RISK SERVICES**

Insurance on: 8-15-18 by: MJB      Bonds approved on: \_\_\_\_\_ by: \_\_\_\_\_  
Forwarded to: \_\_\_\_\_ on: \_\_\_\_\_ by: \_\_\_\_\_      RM #: 19-042

**5 CITY ATTORNEY** to CA 8/15/18

Approved as to Form and Content on: 8/20/18 by: [Signature]  
Forwarded to: [Signature] on: 8-27-18 by: [Signature]

**6 CITY MANAGER** to CM 8/29/18

Signed by City Manager on: 9/10/18 Forwarded to: \_\_\_\_\_ on: \_\_\_\_\_ by: \_\_\_\_\_

**7 CITY CLERK**

City Clerk attested on: 9/17/18 Returned ( 1 ) original(s) to dept. on: 9-17-18 by: [Signature]  
Retained ( 1 ) original(s) for City's file. Hard Copy on file? Yes  No       OB # \_\_\_\_\_

**8 ORIGINATING DEPARTMENT:** Economic Development

Requisition No. \_\_\_\_\_ Original sent to vendor on: \_\_\_\_\_ by: \_\_\_\_\_  
**Copy of contract to be retained by department. Original on file in the Clerk's office.**  
Copy of contract sent to Purchasing on: \_\_\_\_\_ by: \_\_\_\_\_

**9 PROCUREMENT:** Purchase Order No. \_\_\_\_\_ PUR No. \_\_\_\_\_

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CRF  
171

**AGREEMENT**  
**COMMERCIAL REHABILITATION LOAN PROGRAM**  
**FACADE IMPROVEMENT FORGIVABLE LOAN**

(\$19,975.00)

This Agreement (the "Agreement") is made as of this thirtieth day of August, 2018 by and between the City of Stockton (the "**CITY**"), a municipal corporation, and The Open Window Project, a limited liability company, ("the **BORROWER**").

**RECITALS**

A. **CITY** wishes to promote the rehabilitation and preservation of privately-owned commercial real estate in the Stockton community.

B. **BORROWER** wishes to receive from **CITY** and **CITY** wishes to extend to **BORROWER** funds to support the rehabilitation of property located at 630 East Weber Avenue, Stockton, CA hereinafter referred to as the "**PROPERTY**."

C. As a condition of receiving the funds, **BORROWER** shall execute, among other things, this **AGREEMENT**, a promissory note, and a deed of trust, which deed of trust shall be recorded against the **PROPERTY**. These instruments are intended to secure **CITY'S** continuing interest in the condition of the **PROPERTY**, as well as the secure performance of other covenants contained in these agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for providing the funds, **BORROWER** and **CITY** hereby agree as follows:

**ARTICLE 1. DEFINITIONS**

The following terms have the meanings and content set forth in this section wherever used in this Agreement, attached Exhibits, or documents incorporated into this Agreement by reference.

1.1 "**AGREEMENT**" means this agreement entered into between the **CITY** and **BORROWER**.

1.2 "**NOTE**" (the **NOTE**) is that certain promissory note in the total principal amount of Nineteen Thousand Nine Hundred Seventy Five Dollars and 00/100 (\$19,975.00) to be executed by **BORROWER** in favor of the **CITY**, evidencing all or any part of the funds, which is secured by the Deed of Trust, as well as any amendments

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thereto, modifications thereof or restatements thereof. The terms of the **NOTE** are hereby incorporated into this Agreement by this reference.

1.3 **"CITY"** means the City of Stockton, a municipal corporation, and its authorized representatives, officers, officials, directors, employees and agents.

1.4 **"COMMENCEMENT OF REHABILITATION"** means the time **CONTRACTOR** begins physical rehabilitation work on the **PROJECT** at the **PROPERTY**, including site preparatory work, beyond maintenance of the **PROPERTY** in its status quo condition. Such work shall not include work related solely to remediation of Hazardous Materials.

1.5 **"CONTRACTOR"** is a private individual, partnership or corporation licensed by the California State Contractor's Licensing Board. **DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION:** This project will be monitored by the Department of Industrial Relations, Compliance Monitoring Unit (CMU) pursuant to the California Labor Code Section 1771.3 and the California Code of Regulations Sections 16450- 16464. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1[a]]. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to the Labor Code section 1725.5. All contractors and subcontractor must furnish electronic certified payroll records directly to Labor Commissioner once monthly. In addition, the contractor and subcontractors must submit the certified payroll records to the District's Labor Compliance Consultant for review.

1.6 **"DEED OF TRUST"** is the deed of trust, assignment of rents, and security agreement placed on the **PROPERTY** as security for the assistance by **BORROWER** as trustor with the **CITY** as beneficiary, as well as any amendments to, modifications of, and restatements of said deed of trust. The terms of the Deed of Trust are hereby incorporated into this Agreement by this reference.

1.7 **"DOCUMENTS"** are collectively this **AGREEMENT**, the **DEED OF TRUST**, and the **NOTE** as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

1.8 **"HAZARDOUS MATERIALS"** means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation, petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project,

to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards.

1.9 **"PROPERTY"** consists of the rehabilitation of real property located in Stockton, California, and more particularly described in the attached **Exhibit "A,"** which is incorporated into this Agreement by this reference.

1.10 **"PROJECT"** is the rehabilitation work as itemized in the attached **Exhibit "B,"** which is incorporated into this Agreement by this reference.

## **ARTICLE 2. TERMS OF ASSISTANCE**

2.1 **ASSISTANCE.** The **CITY** agrees to provide the funds to **BORROWER** under the terms and conditions of the Documents. The proceeds of the assistance shall only be used by **BORROWER** to pay for eligible costs associated with the **LOAN**.

2.2 **AMOUNT OF ASSISTANCE.** On and subject to the terms and conditions of the Documents, **CITY** agrees to offer and **BORROWER** agrees to accept the assistance in the total amount not to exceed Nineteen Thousand Nine Hundred Seventy-Five Dollars and 00/100 (\$19,975.00) evidenced by the **NOTE**. Said **NOTE** shall be secured by the Deed of Trust recorded against the **PROPERTY**.

2.3 **INTEREST RATE OF ASSISTANCE.** The funds loaned to **BORROWER** for the rehabilitation of the **PROJECT** shall be subject to an interest rate of ten (10%) percent simple interest.

2.4 **TERM.** The term for the **LOAN** shall be a maximum of six (6) years, upon forgiveness of the loan; or payment in full.

2.5 **FORGIVENESS OF LOAN.** **CITY** shall unconditionally waive and forgive each annual principal and interest installment, as they become due, providing **BORROWER** fully complies with all specific program terms and conditions as described in this Agreement. **CITY** shall determine compliance, in its sole discretion, prior to the due date of each annual installment.

2.6 **PREPAYMENT.** Prepayment of any outstanding loan balance shall be permitted under the terms of this **AGREEMENT** without penalty to the **BORROWER**.

2.7 **RELEASE OF LIEN.** **CITY** shall, upon loan forgiveness in entirety or receipt of payment in full from the **BORROWER**, execute and deliver to **BORROWER**, a deed of reconveyance. **BORROWER** shall pay all fees associated with the recording of the deed of reconveyance.

2.8 **USE OF FUNDS.** Loan funds may be used only for the Eligible costs associated with the **LOAN** as well as any revisions to the **PROJECT** Eligible Costs, pursuant to City regulations, and as authorized by this Agreement or that are approved in writing by the **CITY**.

2.9 **BORROWER FUNDS. BORROWER** shall at or prior to the execution of this **AGREEMENT**, either submit evidence that a property improvement loan has been approved and obtained from a private lending institution; or submit evidence that equity funds have been deposited in a trust account with a bona fide fiduciary agent of **BORROWER's** choice in the amount necessary to perform all the rehabilitation work not covered by the subject **CITY** loan; or deposit equity funds with **CITY** in the amount necessary to perform all the rehabilitation work not covered by the subject **CITY** loan.

2.10 **ARCHITECTURAL SERVICES REIMBURSEMENT. BORROWER** shall reimburse **CITY** for the cost of architectural fees paid by the **CITY** in the event of cancellation of the **LOAN**.

### **ARTICLE 3. DISBURSEMENT**

3.1 **DISBURSEMENT OF PROCEEDS.** Disbursement of all proceeds for the **PROJECT** shall be made by the **CITY** upon presentation of approved invoices. Once invoices for payment have been received, **CITY** shall have fifteen (15) days to initiate payment. Payment of invoices for all rehabilitation work shall be subject to a site inspection, verification, and approval that all work covered by invoices is completed to the satisfaction of the **CITY**. **CITY** loan funds will be disbursed only after all **BORROWER** funds have been disbursed for the **PROJECT**.

3.2 **TITLE. BORROWER** warrants that it will maintain good and marketable title to the **PROJECT**.

### **ARTICLE 4. DEVELOPMENT OF PROPERTY**

4.1 **CONFIGURATION OF THE PROPERTY.** The **BORROWER** may, by contract, require the **CONTRACTOR** to rehabilitate the **PROPERTY** pursuant to current building codes as they apply to a commercial structure by contract, as well as to **BORROWER** requirements. At a minimum, **CONTRACTOR** shall perform all rehabilitation by contract.

4.2 **COMMENCEMENT OF REHABILITATION.** The contract shall require that **CONTRACTOR** begin rehabilitation of the **PROPERTY** no later than thirty (30) days from the date of the issuance of a Notice to Proceed.

4.3 **SCHEDULING AND EXTENSION OF TIME.** It shall be the responsibility of **CONTRACTOR** to coordinate and schedule the work to be performed so that commencement and completion of rehabilitation will take place in accordance with the provisions of this Agreement. **CITY** may extend the time for commencement or completion in writing in its sole and absolute discretion. Any time extension granted to **CONTRACTOR** to enable **CONTRACTOR** to complete the work shall not constitute a waiver of any other rights of **CITY** under the Agreement.

4.4 **QUALITY OF WORK. CONTRACTOR** shall rehabilitate the commercial property and shall employ all new building materials of a quality suitable for the requirements of the **PROPERTY**. **CONTRACTOR** shall develop the **PROJECT** in full conformance with applicable local, state, and federal statutes, regulations, and building codes.

4.5 **ADDITIONS OR CHANGES IN WORK. CITY** shall be notified prior to any changes in the work required to be performed under this Agreement. Consent to any additions, changes, or deletions to the work shall not relieve or release **BORROWER** from any other obligations in the Agreement.

4.6 **RECORDS. BORROWER** shall be accountable to **CITY** for all funds disbursed to **CONTRACTOR** pursuant to the Agreement and **CITY** agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn from the funds, and to keep all invoices, receipts, and other documents related to expenditures from said funds for not less than five (5) years after completion of the **PROJECT**.

**CITY** shall promptly comply with all requirements or conditions of the Agreement relating to notices, extensions, and other events required to be reported or requested. **CITY** shall promptly supply any and all information and documentation which involves the **PROJECT** and cooperate with **BORROWER** in the rehabilitation of the **PROJECT**.

4.7 **INSPECTIONS. BORROWER**, by contract, shall permit and facilitate, and require its **CONTRACTOR** to permit and facilitate, observation and inspection at the job site by **CITY** and by public authorities during reasonable business hours for the purpose of determining compliance with this Agreement.

4.8 **REHABILITATION RESPONSIBILITIES. BORROWER** shall be solely responsible for all aspects of conduct in connection with the **PROJECT**, including, but not limited to, the supervision of rehabilitation work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by **CITY** with reference to the **PROJECT** is solely for the purpose of determining whether **BORROWER** is properly discharging its obligations to **CITY**, and should not be relied upon by **BORROWER** or by any third parties as a warranty or representation by **CITY** as to the quality of the rehabilitation of the **PROJECT**.

4.9 **TRANSFER OF PROPERTY. The LOAN** can be assumed or be subordinated, however, **BORROWER** shall not make or create, and shall not, prior to the completion of the **PROJECT** and thereafter, make or permit any sale, assignment, conveyance, lease, or other transfer of this Agreement, the **PROJECT**, or the **PROPERTY**, or any part thereof, including the sale of any interests of **BORROWER** without prior notice to **CITY**. Should such sale, assignment, conveyance, lease or other transfer occur, the balance of the loan, plus any accrued interest due shall be immediately payable to **CITY**.

4.10 **MECHANICS LIENS AND STOP NOTICES.** If any claim of lien is filed against the **PROPERTY** or a stop notice affecting the **PROJECT** is served on **CITY** or other third party in connection with the **PROPERTY**, **CONTRACTOR** shall, within 20 days of such filing or service, either pay and fully discharge the lien or stop notice, effect the release of such lien or stop notice by delivering to **CITY** a surety bond in sufficient form and amount, or provide **CITY** with other assurance satisfactory to **CITY** that the claim of lien or stop notice will be paid or discharged.

If **CONTRACTOR** fails to discharge bond or otherwise satisfy **CITY** with respect to any lien, encumbrance, charge, or claim referred to herein, then in addition to any other right or remedy, **CITY** may, but shall be under no obligation to, discharge such lien, encumbrance, charge, or claim at **BORROWER'S** expense. Alternatively, **CITY** may require **CONTRACTOR** to immediately deposit with **CITY** the amount necessary to satisfy such lien or claim and any costs, pending resolution thereof. **CITY** may use such deposit to satisfy any claim or lien that is adversely determined against **CONTRACTOR**.

4.11 **BARRIERS TO THE DISABLED.** The **PROJECT** shall be developed and maintained to comply with all applicable federal, state, and local requirements for access for disabled persons.

4.12 **FEES, TAXES, AND OTHER LEVIES.** **BORROWER** shall be responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the **PROPERTY** or the **PROJECT**, and shall pay such charges prior to delinquency.

4.13 **DAMAGE TO PROPERTY.** To the extent consistent with the requirements of the beneficiary of any permitted encumbrance or otherwise approved by **CITY**, if any building or improvement on the **PROPERTY** is damaged or destroyed by an insurable cause, **BORROWER** shall, at its cost and expense, diligently undertake to repair or restore said buildings and improvements. Such work or repair shall be commenced within ninety (90) days after the damage or loss occurs and shall be complete within one year thereafter. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, **BORROWER** shall make up the deficiency.

4.14 **UNAVOIDABLE DELAY IN PERFORMANCE.** The time for performance of provisions of this Agreement by either party shall be extended for a period equal to the period of any delay directly affecting the **PROJECT** or this Agreement which is caused by: war; insurrection; strike or other labor disputes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of a public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; suits filed by third parties concerning or arising out of this Agreement; or unseasonable weather conditions. An extension of time for any of the above-specified causes will be deemed granted only if written notice by the party claiming such extension is sent to the other party within ten (10) calendar days from the commencement of the cause and such extension of time is either accepted by the other party in writing, or is not rejected in writing by the other party within ten (10) calendar days of receipt of the notice. In any event, construction of the **PROJECT** must be completed no

later than ninety (90) calendar days after the scheduled completion date specified herein, any avoidable delay notwithstanding.

**ARTICLE 5. NONDISCRIMINATION.**

5.1 **NONDISCRIMINATION.** **BORROWER** shall not discriminate or segregate in the rehabilitation, use, enjoyment, occupancy or conveyance of any part of the **PROPERTY** on the basis of race, color, ancestry, national origin, religion, sex, sexual orientation and preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis. **BORROWER** shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

**ARTICLE 6. EMPLOYMENT**

6.1 **EQUAL EMPLOYMENT OPPORTUNITY.** **BORROWER** and any contractors, subcontractors, and professional service providers for the **PROJECT** shall comply with all requirements concerning equal employment opportunity, if applicable, which are hereby incorporated into this Agreement by this reference, and shall incorporate such provisions in all rehabilitation contracts, professional services contracts, and subcontracts for work on the **PROJECT**.

6.2 **ENFORCEMENT OF EMPLOYMENT REQUIREMENTS.** In the event of any violation or deficiency with respect to the equal opportunity provisions herein, including failure to provide adequate documentation as specified herein, by **BORROWER** or by any contractor or subcontractor employed on the **PROJECT**, **CITY**, in addition to other rights and remedies afforded by this Agreement or applicable law, may: (1) demand that any noncomplying party comply with these requirements; (2) withhold disbursement of Loan proceeds to Corporation or any contractor or subcontractor until such violations are corrected; (3) impose liquidated damages on the noncomplying party in the form of a forfeiture of up to one thousand dollars (\$1,000) or one percent (1%) of the contact, whichever is less, the amount of such forfeiture to be determined solely by **CITY**; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying party shall comply with any demand to correct any noncompliance within ten (10) calendar days of said demand; and if full compliance is not possible within ten days, shall commence to correct any non-compliance within 10 days and completely correct the non-compliance as reasonably possible thereafter.

**BORROWER** shall monitor and cooperate with **CITY** in the mutual enforcement of the equal employment opportunity requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that **BORROWER** fails to monitor or enforce these requirements against any contractor or subcontractor, **CITY** may withhold payments to **BORROWER**, may impose liquidated damages on **BORROWER** in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law,

and/or may declare an Event of Default and pursue any of the other remedies available under this Agreement.

## **ARTICLE 7. INDEMNITY AND INSURANCE**

**7.1 INSURANCE COVERAGE.** **BORROWER** shall cause to have in full force and effect during the term of the Agreement the insurance coverage in the minimum amount to be determined by the **CITY**. In addition, **CITY** shall ensure that the general contractor for the **PROJECT** maintains the insurance coverage specified by law.

**7.2 INSURANCE ADVANCES.** In the event **BORROWER** fails to maintain the full insurance coverage required by this Agreement, **CITY**, after at least seven (7) business days prior written notice to **BORROWER**, may, but shall be under no obligation to, take out the required policies of insurance and pay the premiums on such policies. Any amount so advanced by **CITY**, together with interest thereon from the date of such advance at the same rate of indebtedness as specified in the Note (unless payment of such an interest rate would be contrary to applicable law, in which event such sums shall bear interest at the highest rate then allowed by applicable law), shall become an additional obligation of **BORROWER** to **CITY** and shall be secured by the Deed of Trust.

**7.3 NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** **CITY** shall not be personally liable to **BORROWER** for any obligation created under the terms of this Agreement except in the case of actual fraud or willful misconduct by such person.

**7.4 INDEMNITY.** Except for the sole negligence of the **CITY**, the **BORROWER** undertakes and agrees to defend, indemnify, and hold harmless **CITY** from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement on the part of the **BORROWER'S** or any contractor or subcontractor of borrower or on the **PROPERTY** or the **PROJECT**, whether or not contributed to by an act or omission of the **CITY**. **BORROWER** shall pay immediately upon **CITY'S** demand any amounts owing under this indemnity. The duty of **BORROWER** to indemnify includes the duty to defend **CITY** or, at **CITY'S** choosing, to pay **CITY'S** costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the **PROPERTY** or the **PROPERTY**. **BORROWER'S** duty to indemnify **CITY** shall survive the term of this Agreement and the reconveyance of the Deed of Trust.

**7.5 USE OF INSURANCE PROCEEDS; CONDEMNATION.** In the event of any fire or other casualty to any real property securing the funds in whole or in part, or eminent domain proceedings resulting in condemnation of such **PROPERTY** or any part thereof, such event shall not constitute a default under the Agreement and the **BORROWER** shall have the right to rebuild the affected **PROPERTY**, and to use all available insurance or condemnation proceeds to that end, provided that; (a) the available proceeds, together with any funds supplied by **BORROWER** from other sources, are sufficient to rebuild the affected **PROPERTY** in a manner that provides adequate security to the **CITY** for



repayment of the funds; and (b) no material default then exists under any Agreement other than defaults which are a result of a fire or other casualty or condemnation.

## **ARTICLE 8. HAZARDOUS MATERIALS**

8.1 **NOTIFICATION TO CITY. BORROWER** shall immediately notify **CITY** in writing of: (a) the discovery of any concentration or amount of Hazardous Materials on or under the **PROPERTY** requiring notice to be given to any governmental entity or agency under Hazardous Materials Laws; (b) any knowledge by **BORROWER'S** (after verification of the veracity of such knowledge to **BORROWER** reasonable satisfaction) that the **PROPERTY** does not comply with any Hazardous Materials Laws; (c) the receipt by of written notice of any Hazardous Materials claims; and (d) the discovery by **BORROWER** of any occurrence or condition on the **PROPERTY** or on any real property located within 2,000 feet of the **PROPERTY** that could cause the **PROPERTY** or any part thereof to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

8.2 **USE AND OPERATION OF PROPERTY.** Neither **BORROWER**, nor any agent, employee, or contractor of **BORROWER**, nor any authorized user of the **PROPERTY** shall use the **PROPERTY** or allow the **PROPERTY** to be used for the generation, manufacture, storage, disposal, or release of Hazardous Materials. **BORROWER** shall comply and cause the **PROJECT** to comply with Hazardous Materials Laws.

8.3 **REMEDIAL ACTIONS.** If **BORROWER** has actual knowledge of the presence of any Hazardous Materials on or under the **PROPERTY**, **BORROWER** shall immediately take, at no cost or expense to **CITY**, all handling, treatment, removal, storage, decontamination, cleanup, transport, disposal or other remedial action, if any, required by any Hazardous Materials Laws or by any orders or requests of any governmental entity or agency or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials claims. The foregoing, however, shall be subject to **BORROWER'S** right of contest below.

8.4 **RIGHT OF CONTEST. BORROWER** may contest in good faith any claim, demand, levy or assessment under Hazardous Materials Laws if: (a) the contest is based on a material question of law or fact raised by **BORROWER** in good faith, (b) **BORROWER** promptly commences and thereafter diligently pursues the contest, (c) the contest will not materially impair the taking of any remedial action with respect to such claim, demand, levy or assessment, and (d) if requested by **CITY**, **BORROWER** deposits with **CITY** any funds or other forms of assurance **CITY** in good faith from time to time determines appropriate to protect **CITY** from the consequences of the contest being unsuccessful and any remedial action then reasonably necessary. No Event of Default shall be deemed to exist with respect to any claim, demand, levy or attachment being contested by **BORROWER** under the conditions of this Section 8.4.

8.5 **ENVIRONMENTAL INDEMNITY.** **BORROWER** shall defend, indemnify, and hold **CITY** from and harmless against any claims demands, administrative actions, litigation, liabilities, losses, damages, response costs, and penalties, including all costs of legal proceedings and attorney's fees, that **CITY** may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty, agreement, or covenant contained in this Agreement with respect to Hazardous Materials, or as a consequence of any use, generation, manufacture, storage, release, or disposal (whether or not **BORROWER'S** knew of same) of any Hazardous Materials occurring prior to or during **BORROWER** use of the **PROPERTY**.

## **ARTICLE 9. DEFAULT AND REMEDIES**

9.1 **EVENTS OF DEFAULT.** The occurrence of any of the following events shall upon giving of applicable notice and, expiration of applicable cure period, constitute an "Event of Default" under this Agreement:

A. Monetary. (1) **BORROWER'S** failure to pay when due any sums payable under, the **NOTE** or any advances made by **CITY** under the Deed of Trust or this Agreement; (2) **Borrower's** use of funds for costs other than eligible costs respectively, or for uses inconsistent with other terms and restrictions in the Agreement; (3) **BORROWER'S** failure to obtain and maintain the insurance coverage required under this Agreement; (4) **BORROWER'S** failure to make any other payment or assessment due under the Agreement; and (5) **BORROWER'S** default in any other financing of the **PROJECT**.

B. Rehabilitation. (1) **CONTRACTOR'S** substantial deviation in the work of rehabilitation specified in the Scope of Work, without **CITY'S** prior written consent; (2) **CONTRACTOR'S** use of defective or unauthorized materials or defective workmanship in rehabilitating the **PROJECT**; (3) **CONTRACTOR'S** failure to commence or complete rehabilitation, without proper justification under the unavoidable delay provision of this Agreement, according to the schedule specified in this Agreement; (4) the cessation of construction prior to completion of the **PROJECT** for a period of more than 15 continuous calendar days; (5) any material adverse change in the condition the **PROJECT** that gives **CITY** reasonable cause to believe that the **PROJECT** cannot be rehabilitated by the schedule completion date according to the terms of this Agreement; (6) the filing of any claim of lien against the **PROPERTY** or service on **CITY** of any stop notice relating to the **PROJECT** and the continuance of the claim of lien or stop notice for 20 days after such filing or service without payment, discharge, or satisfaction as provided for in this Agreement; (7) **CONTRACTOR'S** failure to remedy any deficiencies in record keeping or failure to provide records to **CITY** upon **CITY'S** request; (8) **BORROWER'S** failure to substantially comply with any federal, state, or local laws or **CITY** policies governing rehabilitation, including but not limited to provisions of this Agreement pertaining to affirmative action and equal employment opportunity, minority and female-owned business enterprises, disabled access, lead-based paint, and Hazardous Materials.

C. General performance of obligations. (1) any substantial or continuous breach by **BORROWER** of any material obligations imposed in the Agreement; (2) any breach as to obligations shall be a breach of both.

D. General performance of other obligations. Any substantial or continuous breach by **BORROWER** of any material obligations on **BORROWER** imposed by any other agreements with respect to the financing, development, or operation of the **PROPERTY** or the **PROPERTY**, whether or not **CITY** is a party to such agreement.

E. Representations and warranties. A determination by **CITY** that any of **BORROWER** representations or warranties made in the Loan Documents, any statements made to **CITY** by **BORROWER**, or any certificates, documents, or schedules supplied to **CITY** by **BORROWER** were untrue in any material respect when made, or that **BORROWER** concealed or failed to disclose a material fact from **CITY**.

F. Damage to PROPERTY. Material damage or destruction to the **PROPERTY** by fire or other casualty, if **BORROWER** does not take steps to reconstruct the **PROPERTY** to the extent required by the Agreement.

G. Bankruptcy, dissolution, and insolvency. **BORROWER** or any instrument controlling Borrower's (1) filing, either voluntarily or involuntarily, for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or 60 days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing; (4) insolvency; (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

H. Default in the note. Any event of default as to the **NOTE** shall be considered a default as to each obligation.

9.2 **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.** For Events of Default which are not exclusively monetary, **CITY** shall give written notice to **BORROWER** of any Event of Default by specifying: (a) the nature of the event or deficiency giving rise to the Default, (b) the action required to cure the deficiency, if any action to cure is possible, and (c) a date, which shall not be less than 30 calendar days from the date of receipt of the notice or the date the notice was refused, by which such action to cure must be taken. If the **BORROWER** fails to take corrective action to cure the default within the time specified, the **CITY** will seek remedies to accelerate the Agreement as well as any monies advanced to **BORROWER** by **CITY**.

9.3 **CITY'S REMEDIES.** Upon the happening of an Event of Default by **BORROWER** and a failure to cure said Event of Default within the time specified in the notice of Event of Default (if a notice is required), **CITY'S** obligation to disburse funds shall terminate, and **CITY** may also, in addition to other rights and remedies permitted by the

Agreement or applicable law, proceed with any or all of the following remedies in any order or combination **CITY** may choose in its sole discretion:

A. Terminate this Agreement, in which event the entire principal amount outstanding and all accrued interest under the **NOTE**, as well as any other monies advanced to **BORROWER** by **CITY** including administrative costs, shall immediately become due and payable at the option of the **CITY**;

B. Bring an action in equitable relief: (1) seeking the specific performance by **BORROWER** of the terms and conditions of the Agreement, and/or (2) enjoining, abating, or preventing any violation of said terms and conditions, and/or (3) seeking declaratory relief;

C. Order immediate stoppage of rehabilitation and demand that any condition leading to the Event of Default be corrected before construction may continue;

D. Initiate and pursue any private and/or judicial foreclosure action allowed under applicable law and the power of sale provision in the Deed of Trust;

E. With respect to defaults under Hazardous Materials provisions herein, pursue the rights and remedies permitted under California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564, 726.5, and 736; or

F. Pursue any other remedy allowed at law or in equity.

Nothing in this Section is intended or shall be construed as precluding **CITY** from proceeding with a non-judicial foreclosure under the power of sale contained in the Deeds of Trust in the Event of Default by **BORROWER**.

9.4 **BORROWER REMEDIES.** Upon the fault or failure of **CITY** to meet any of its obligations under the Agreement, **BORROWER** may:

A. Demand payment from **CITY** of any sums due **BORROWER**;

B. Bring an action in equitable relief seeking the specific performance by **CITY** of the terms and conditions of the Agreement; and

C. Pursue any other remedy allowed at law or in equity.

## **ARTICLE 10. GENERAL PROVISIONS**

10.1 **GOVERNING LAW.** The documents shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law or those provisions preempted by federal law.

10.2 **STATUTORY REFERENCES.** All references in the documents to particular statutes, regulations, ordinances, or resolutions of the United States, the State of California, or the City of Stockton shall be deemed to include the same statute, regulation, ordinance, or resolution as hereafter amended or renumbered, or if repealed, to such other provision as may thereafter govern the same subject as the provision to which specific reference was made.

10.3 **ATTORNEYS' FEES AND COSTS.** In the event any Event of Default or any legal or administrative action is commenced to interpret or to enforce the terms of the Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees (which as to any party shall include the allocated reasonable costs for services of any party's in-house counsel and/or private counsel) and costs in such action.

10.4 **TIME.** Time is of the essence in this Agreement.

10.5 **CONSENTS AND APPROVALS.** Except as expressly provided herein, any consent or approval of **CITY** or **BORROWER** required under the Agreement shall not be unreasonably withheld. Any approval required under the Agreement shall be in writing and executed by an authorized representative of the party granting the approval.

10.6 **RELATIONSHIP OF PARTIES.** The relationship of **BORROWER** and **CITY** for this **PROPERTY** under this Agreement is and at all times shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. **CITY** neither undertakes nor assumes any responsibility or duty to **BORROWER** (except as provided for herein) or any third party with respect to the **PROPERTY**, the **PROPERTY**, or the Agreement. Except as **CITY** may specify in writing **BORROWER** shall have no authority to act as an agent of City or to bind City to any obligation.

10.7 **WAIVER.** Any waiver by **CITY** of any obligation in these Agreement must be in writing. No waiver will be implied from any delay or failure by **CITY** to take action on any breach or default of **BORROWER** or to pursue any remedy allowed under the Agreement or applicable law. Any extension of time granted to **BORROWER** to perform any obligation under the Agreement shall not operate as a waiver or release from any of its obligations under the Agreement. Consent by **CITY** to any act or omission by **BORROWER** shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for **CITY'S** written consent to future waivers.

10.8 **INTEGRATION.** This Agreement and the other Loan Documents, including exhibits, executed by **BORROWER** for the **PROPERTY**, contain the entire agreement of the parties and supersede any and all prior negotiations.

10.9 **OTHER AGREEMENTS.** **BORROWER** represents that it has not entered into any agreements that are inconsistent with the terms of the Agreement. **BORROWER**

shall not enter into any agreements that are inconsistent with the terms of the Agreement without an express waiver by CITY in writing.

10.10 **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to the Agreement must be in writing, and shall be made only if executed by both **BORROWER** and **CITY**.

10.11 **SEVERABILITY.** Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first above written.

**PROPERTY OWNER(S):**

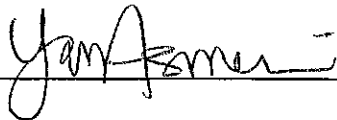
By: 

Print Name: Zachary Cat

Title: Owner

**APPROVED AS TO FORM:**

John M. Luebberke  
City Attorney

By: 

**APPROVED BY:**

  
Laurie Montes  
Deputy City Manager

**ATTEST:**  
CLERK OF THE CITY OF STOCKTON

By: 

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

APN: 149-180-03

Lots 7 and 9 in Block 7, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

**Exhibit "B"**

**Description of Work**

(See attached)





**Contract of Service**



8714 Thornton Road  
Stockton, CA 95209  
(209) 474-6653 Fax: (209) 474-1622

DIV. OF GRUETTNER ENTERPRISES, INC.  
PETER GRUETTNER  
LIC. NO. 727529

Proposal submitted: 08/13/2018 to: Cynthia

Work to be performed at:

Name: The Sycamore 10, LLC  
Address: 110 N San Joaquin Street, 5<sup>th</sup> Floor, Stockton  
Phone: 209-469-2678 Ext 304

Name: The Sycamore  
Address: 630 E Weber Avenue, Stockton  
Phone:


Remove and install (6) openings. Install new storefront system 2 x 4 1/2 bronze anodized.  
1 pair of 3/0 x 7/0 doors and transom glass. 1 3/0 x 7/0 single door  
All labor in compliance with Davis Bacon prevail wages


Total price installed - \$29,950.00

Respectfully submitted,

Kris Long

Agreed and Accepted by:

Signature   
Zac Cort, Manager

Signature   
Peter Gruettner

# PARKING AUTHORITY

OF THE CITY OF STOCKTON

425 N. El Dorado St., 3<sup>rd</sup> Floor, Stockton, CA 95202

(209) 937-8539 Fax (209) 937-5099

[www.stocktonca.gov](http://www.stocktonca.gov)

*SENT VIA FEDEX*

May 28, 2019

John Jordan  
National Public Finance Guarantee Corporation  
1 Manhattanville Road, Suite 301  
Purchase, NY 10577

## **CONSENT TO SALE OF PROPERTY DESCRIBED IN SCHEDULE I**

Pursuant to Section 2.10 of that certain Forbearance Agreement dated as of February 25, 2015 (the "Forbearance Agreement"), by and between the City of Stockton, the Parking Authority of the City of Stockton (the "Parking Authority"), the Stockton Public Financing Authority, Wells Fargo Bank, National Association, as trustee (the "Trustee"), and National Public Finance Guarantee Corporation (the "National"), the Parking Authority hereby requests the consent of National to the sale of the property of the Parking Authority described in Schedule I attached to this letter (the "Property").

The Property consists of 90 surface lot parking spaces that generates approximately \$15,000 in net revenue annually. As a comparison, the entire parking district consists of approximately 5,094 parking spaces. There is sufficient nearby parking to accommodate the customers currently parking on the Property as demonstrated in the attached parking district map. The developer, Ten Space, is interested in acquiring the property for the Open Window Project Master Development Plan, which consists of approximately 1,000 housing units and 200,000 s.f. of retail/commercial space. A footprint of the Open Window Project is attached as a reference.

Further, pursuant to Section 2.10 of the Forbearance Agreement, the Parking Authority hereby certifies as follows:

1. The Property does not constitute any portion of the Core Parking Assets, as such term is defined in the Forbearance Agreement.
2. Revenues for the current Fiscal Year are projected to be \$6,195,465 and following such sale, Revenues for the current Fiscal Year and the next succeeding Fiscal Year are projected to be \$6,180,465 and \$6,322,407, respectively. Fund balance over the current and next fiscal year are projected to be \$1,932,006 and \$2,284,445 (including Installment Payments due and payable in such Fiscal Years), which are projected to be \$910,094 each year.

John Jordan  
May 28, 2019  
Page 2

3. Net revenues for the current fiscal year and the next succeeding fiscal year are projected to be equal to at least 1.25 times the maximum annual debt service for such fiscal years.
4. Funds received from the sale of the Property will be deposited within the appropriate Parking Authority fund.

Attached as Schedule II to this letter is a form of consent to the market-rate sale of the Property. Please confirm National's consent to the sale of the Property by executing the consent in such form and delivering it to my attention at the address above. A copy of this letter, including the form of consent, has also been provided to the Trustee for execution and delivery. If you have any questions or need any additional information concerning the sale, you may reach me at 209-937-8810.



KURT C. WILSON, EXECUTIVE DIRECTOR  
PARKING AUTHORITY OF THE CITY OF STOCKTON

JM:slw

Attachments (5)

cc: Wells Fargo Bank, National Association  
Attention: Veronica Ard  
Corporate Trust Services  
Middle Office—Covenant Compliance  
600 S. Fourth Street, 7<sup>th</sup> Floor  
MACN9300-073  
Minneapolis, MN 55479

John Luebberke, City Attorney  
City of Stockton

SCHEDULE I

"Property"

Property Address	APN	Description
24 N California Street (Lot L)	149-180-05	Paved Surface Lot L Parking Spaces

SCHEDULE II

FORM OF CONSENT TO SALE OF PROPERTY

Dated: June 5, 2019

The undersigned authorized representative of National Public Finance Guarantee Corporation ("National"), pursuant to section 2.10 of that Certain Forbearance agreement, dated as of February 25, 2015 (the 'Forbearance Agreement'), by and among the City of Stockton, California (the "City") the Parking Authority of the City of Stockton (the "Parking Authority") Wells Fargo Bank, National Association, as Trustee (the "2004 Parking Bond Trustee") and National hereby consents to the sale of that certain property by the Parking Authority, and the inclusion of such Property on Exhibit D, Excluded Parking Assets, attached to that Installment Sale Agreement, dated as of February 25, 2015 (the "Installment Sale Agreement"), by and between the Parking Authority, National and the Trustee. Pursuant to Section 2.10 of the Forbearance Agreement National hereby directs the Trustee to also execute and deliver this Consent to Sale of Property.

NATIONAL PUBLIC FINANCE  
GUARANTEE CORPORATION

By: 

Authorized Representative

Name: John Jordan

The undersigned authorized representative of the Trustee, pursuant to Section 2.10 of the Forbearance Agreement and the written direction delivered by National herein, hereby consents to the sale of the Property and its inclusion on Exhibit D, Excluded Parking Assets attached to that certain Installment Sale Agreement, dated as of February 25, 2015 (the 'Installment Sale Agreement'), by and between the Parking Authority, National and the Trustee.

WELLS FARGO BANK, N.A.

By: 

Authorized Representative

Name: SCOTT C. EMMONS

Acknowledged and agreed:  
PARKING AUTHORITY OF THE  
CITY OF STOCKTON

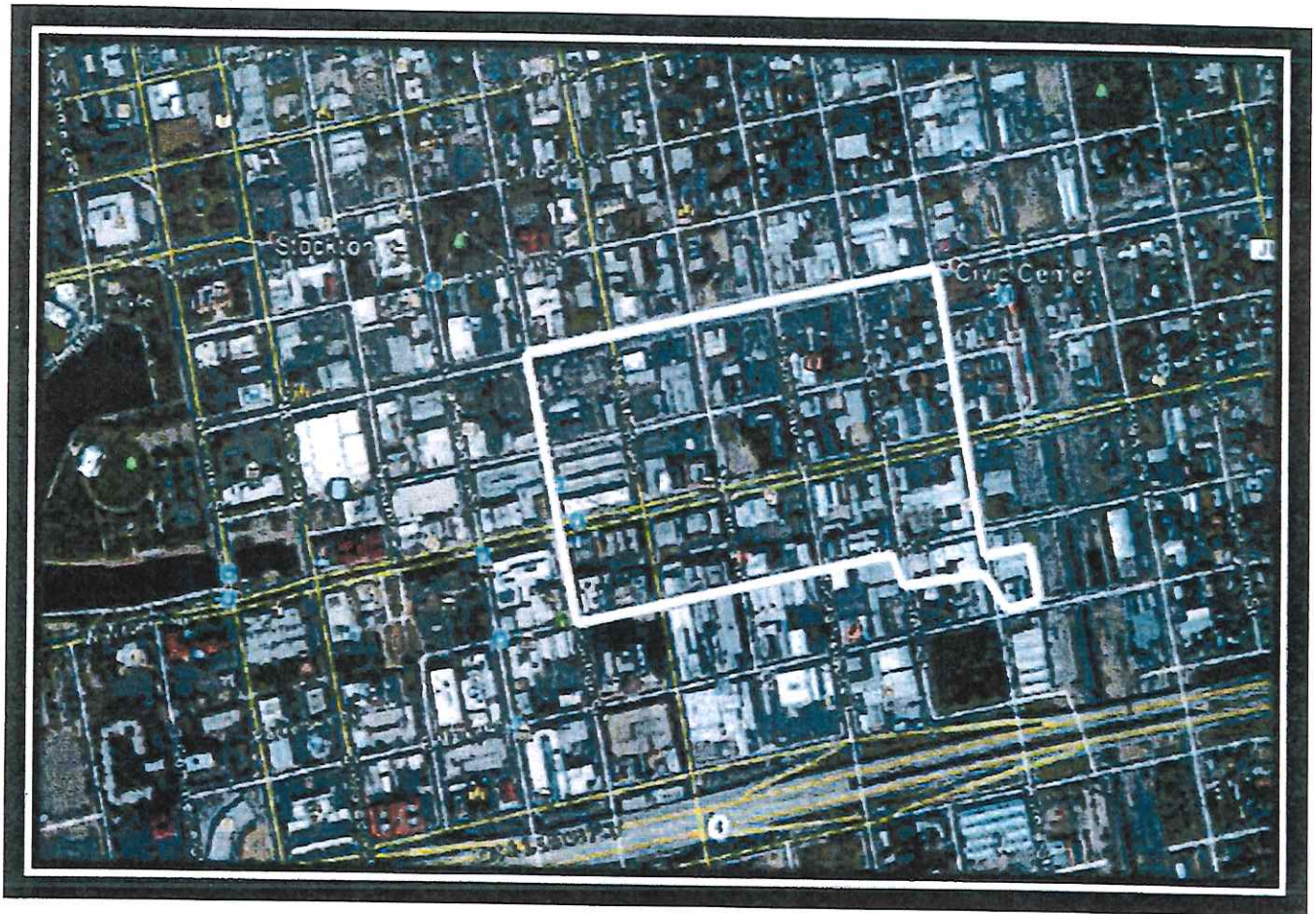
By: 

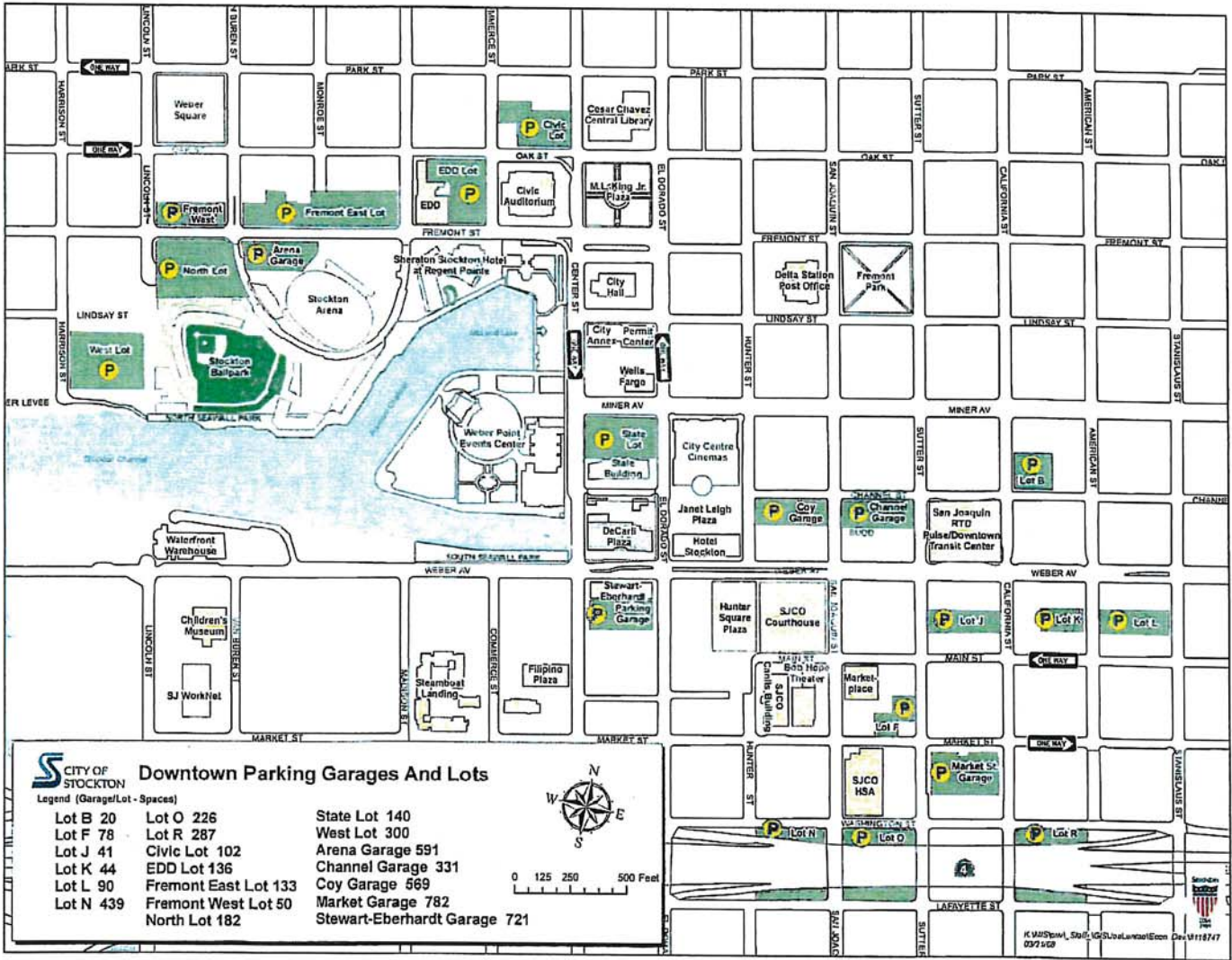
Kurt O. Wilson  
Executive Director

24 NORTH CALIFORNIA STREET – AERIAL VIEW



OPEN WINDOW PROJECT AREA MAP







## MEMORANDUM

February 4, 2021

TO: Harry Black, City Manager  
City Manager's Office

FROM: Carrie Wright, Economic Development Director  
Janice Miller, Assistant Director  
Economic Development Department

SUBJECT: **OPEN WINDOW PROJECT - UPDATE**

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In February 2016, the City Council adopted a Development Agreement (DA) for the Open Window Project (OWP) in Downtown Stockton. The developer on the project is Zac Cort with Ten Space who owns approximately three dozen properties in the downtown area. The DA has an initial ten-year term and was recorded on July 20, 2016; it will expire in 2026.

The OWP is an infill development project consisting of 15 square-blocks in Downtown Stockton, bound by Miner Avenue to the north, Main Street to the south, Aurora Street to the east, and Sutter Street to the west. According to the executed DA, the project includes approximately 1,000-1,400 residential units, 200,000 s.f. of retail/flex space, and 200,000 s.f. of commercial/art/studio space. Phase I of the OWP originally consisted of 261 housing units, of which 231 will be market rate, and 92,400 s.f. of commercial/retail space.

The City Council also approved an Option Agreement in February 2016, with OWP to acquire several City and Parking Authority properties. To date, the developer has acquired four out of the eight properties included in the agreement. The Option Agreement was terminated by the City on December 10, 2020, due to failure to comply with the terms of the agreement and to pay the annual option fee.

In October 2016, the Council approved a Downtown Infrastructure Infill Reimbursement Agreement for \$3.8 million with OWP for Phase I of the project. A First Amendment to the agreement was approved in May 2016, releasing \$760,000 to OWP with seven properties owned by OWP used as security for the advancement. In October 2017, a Second Amendment was approved by the Council increasing the reimbursement agreement to \$6.18 million.

On July 14, 2020, the Council approved a Third Amendment to the Downtown Infrastructure Infill Reimbursement Agreement due to a change in the scope of Phase I from 231 market-rate housing units to 129 market-rate units and reducing the commercial space from 92,400 s.f. to 55,300 s.f. As a result, this reduced the amount of funds the City is obligated to commit from \$6.18 million to \$4.95 million based on the Downtown Infrastructure Infill program guidelines, which require that either 35 market-rate housing units or 30,000 s.f. of commercial space be developed for every \$900,000 in infrastructure funding sought.

On July 1, 2019, a Downtown Financial Incentive Program (DFIP) agreement with Mr. Cort was executed for the property he owns as 800 E. Main Street and occupied by the Child Abuse Prevention Council. The DFIP contract agrees to reimburse Mr. Cort \$33,686 in eligible permit fees so long as the permitted improvements are completed within 180 days of permit issuance. Mr. Cort failed to complete the project within the 180-day period and on December 30, 2020, submitted a formal request to extend the DFIP timeline, which was denied by the City.

The OWP DA was recently reviewed, as required annually, by the Community Development Department for compliance and a report was submitted to the Planning Commission (PC) on October 22, 2020. The report to the PC indicated that to meet the DA requirements, 300 residential units will need to be completed within the next five years and eight months, and that numerous building permit applications were submitted but most have since expired due to a lack of activity by Mr. Cort. Further, the DA requires that Mr. Cort obtain written consent from the City to sell any property included in the DA; however, ten properties were sold without City approval. The Planning Commission determined that the developer was substantially in compliance with the terms and conditions of the DA, but requested that Mr. Cort final all necessary permits for demolition work undertaken without the required permits and that the sold properties be brought into compliance with the Development Agreement as quickly as possible. Permits were obtained in January 2021, for demo previously conducted without permits on the Kendall Building and 836 Channel Street; these buildings have now been removed from the City's code enforcement watch list. To date, Mr. Cort has yet to submit the required assumption agreements associated with the sale of the subject properties.

Staff realizes the economic challenges of a project of this magnitude and appreciates the investment that Mr. Cort is making in the City. However, Mr. Cort has made little progress to date on the Open Window Project and staff continues to track and address the Developer's inconsistent progress and repetitious procedural and code violations.

Specifically, there have been frequent code violations on several properties owned by the developer within the project footprint. In addition, the developer has conducted work on projects without permits, which necessitated City intervention via stop work orders until the appropriate permits were obtained.

Further, he has repeatedly indicated that he is close to obtaining financing for both Phase I and Phase II of the project and, in July 2020, indicated that he anticipates resubmitting for plan review within the next month and beginning construction by the end of 2020. Neither the financing nor the resubmittal of building plans have occurred.



CARRIE WRIGHT, DIRECTOR  
ECOMONIC DEVELOPMENT DEPARTMENT

CW:JM:slw

cc: Maraskeshia Smith, Deputy City Manager  
Will Crew, Community Development Director



# CITY OF STOCKTON

## ECONOMIC DEVELOPMENT DEPARTMENT

400 E. Main Street, 4<sup>th</sup> Floor • Stockton, CA 95202 • 209/937-8539 • Fax 209/937-5099

[www.stocktonca.gov](http://www.stocktonca.gov)

January 3, 2019

Zac Cort  
110 N. San Joaquin St., 5<sup>th</sup> floor  
Stockton, CA. 95202

### **Storefront Beautification Micro Grant Program**

Congratulations! Your **Storefront Beautification Micro Grant** from the City of Stockton has been approved in the amount of **\$2,000**, for the storefront improvements located at **235 N. San Joaquin St., effective January 3, 2019**. The term of the grant will be for a period of six months effective the date of this letter.

As a condition of the GRANT, GRANTEE shall accept all conditions cited within.

NOW, THEREFORE, IN CONSIDERATION of the mutual agreements, obligations and representations, and in further consideration for the making of the GRANT, GRANTOR and GRANTEE hereby agree as follows:

### **ARTICLE 1. DEFINITIONS**

- 1.1 **"GRANT"** is the grant of General funds in the amount not to exceed \$2,000 by the Grantor to Grantee pursuant to this Grant Award.
- 1.2 **"GRANTEE"** is the commercial property owner and/or business owner of the real property which is the subject of the Grant entitlement.
- 1.3 **"GRANTOR"** is the City of Stockton.
- 1.4 **"ELIGIBLE COSTS"** means those Project costs related to the labor and exterior improvements to the Property.
- 1.5 **"ELIGIBLE PROJECTS"** Projects must be for the purpose of improving commercial real property and must be located within targeted areas of the City of Stockton as identified in the Storefront Beautification Micro Grant Program Guidelines. Grants will provide funds to commercial property owner and/or business owners to be used toward storefront improvements such as new windows, paint, awnings, signage, lighting and landscaping hardscape.

### **ARTICLE 2. GRANT CONDITIONS**

2.1 **GRANT.** The GRANTOR agrees to provide the GRANT to GRANTEE without demand for repayment from GRANTEE providing all conditions are met.

2.2 **ELIGIBILITY.** Grant assistance shall be limited to persons who are owners of commercial retail property or businesses located within targeted areas of the City of Stockton as shown in Attachment A.

2.3 **ONE-TIME ELIGIBILITY.** The GRANTEE shall be entitled to receive only one such grant per property in the amount specified in Section 1.1.

2.4 **DISBURSEMENT.** All funds disbursed under this program shall be expended only for the purpose of labor and exterior improvements and work defined as eligible costs/projects. Upon submission and review of required labor compliance documentation of any onsite labor which was conducted (**when onsite labor exceeds \$1,000**) and project invoices, funds will be authorized to the property and/or business owner, contractor and/or vendor. Final payment is subject to all required documentation being completed satisfactorily.

2.5 **MAINTENANCE.** By notice of this Grant Award Property owners are agreeing to maintain property for a period of one-year.

2.6 **CONTRACTS AND SUBCONTRACTS.** All construction work and professional services for the PROJECT shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work or service in the State of California and the CITY.

2.7 **PREVAILING WAGES.** To the extent required by the Federal and/or California Labor Standards as contained in 29 C.F.R. Parts 3, 5, 5a, the GRANTEE shall pay, or cause to be paid, such rates of wages for construction work done in connection with the PROJECT.

GRANTEE:

By: Zac Cort  
GRANTEE

APPROVED BY:

By: Sheba Person-Whitley  
Economic Development Department

Feel free to contact me at (209) 937-8309 should you have questions.

Sincerely,



Hope Paulin  
Analyst  
Economic Development Department

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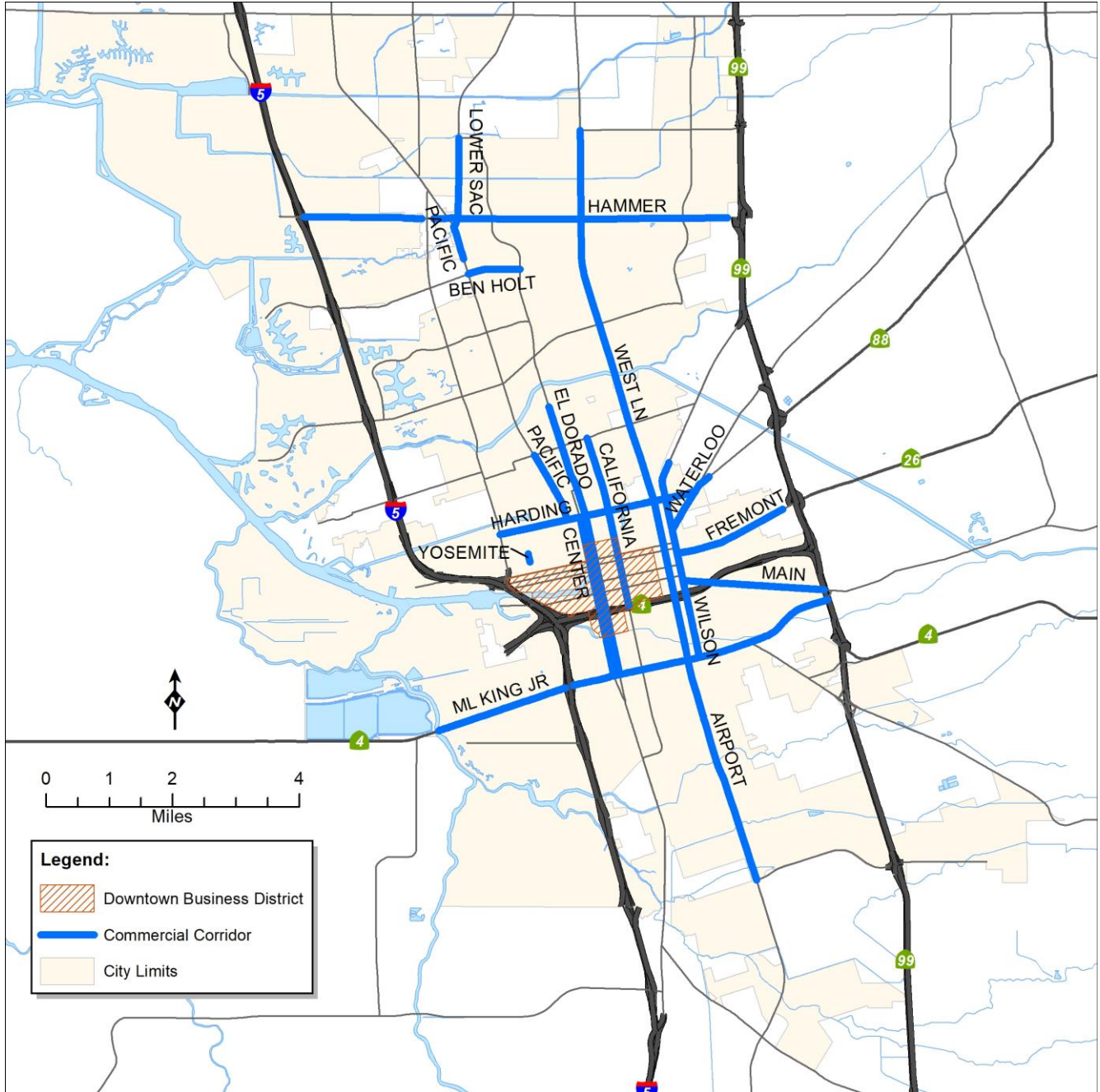
### **ACKNOWLEDGEMENT**

I, Zach Cort, acknowledge that I have received, reviewed, and agree with the conditions set forth within the award letter above.

X \_\_\_\_\_

# ATTACHMENT A

## Storefront Beautification Micro Grant Program Map of Approved Commercial Corridors



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:



City of Stockton  
Economic Development Department  
425 N. El Dorado Street  
Stockton, CA 95202

Attn: Janice Miller

APN: 139-250-06

No Fee Document Government Code § 27383

## DEED OF TRUST

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) **“Deed of Trust”** means this document, which is dated May 16, 2017, together with all Riders to this document.

(B) **“Borrower”** is The Open Window Project, LLC, a California Limited Liability Company. Borrower is the trustor under this Deed of Trust.

(C) **“Lender”** is City of Stockton, a municipal corporation. Lender’s address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) **“Trustee”** is City of Stockton, a municipal corporation.

(E) **“Agreement”** means the Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement signed by Borrower and dated May 15, 2017. The Amended Agreement states that Borrower owes City seven-hundred sixty thousand and 00/100 Dollars (\$760,000.00).

(F) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”

(G) **“Loan”** means the debt evidenced by the Agreement, plus all sums due under this Deed of Trust.

(H) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) **“Miscellaneous Proceeds”** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) **“RESPA”** means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(K) **“Successor in Interest of Borrower”** means any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Agreement and/or this Deed of Trust.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Agreement; and (ii) the performance of Borrower’s covenants and agreements under this Deed of Trust and the Agreement. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit “A”

Which currently has the address of 510 E Miner Street, Stockton, California 95202 (“Property Address”)

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the “Property.”

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal.** Borrower shall pay when due the principal of the debt evidenced by the Agreement and any additional amounts due under the Agreement. Payment due under the Agreement and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Agreement or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Agreement and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Agreement or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Agreement and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Agreement; (b) principal due under the Agreement; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Agreement shall not extend or postpone the due date.

Borrower is allowed to submit early payment of the first 20% of the \$3.8 million, which equals \$760,000, without the Borrower first obtaining building permits for the public infrastructure improvements and Phase I of the Project.

**3. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.



Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

In return for releasing \$760,000 of the approved funding, Borrower agrees that City may place liens on the seven (7) properties described in the Amended Agreement as security. Liens will remain in place until such time that the Borrower has provided written verification, acceptable to the Lender, that it has secured financing for Phase I of the Project OR that building permits for both the public infrastructure improvements and Phase I has been issued, whichever occurs first.

**4. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower

further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Agreement or this Deed of Trust, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Agreement or this Deed of Trust whether or not then due.

**5. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**6. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the property as Borrower's place of business.

**7. Protection of Lender's Interest in the Property and Rights Under this Deed of Trust.** If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

**8. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be

required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to

commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**10. Joint and Several Liability; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower's obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

**11. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Agreement). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**12. Notices.** All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address

under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

**13. Governing Law; Severability; Rules of Construction.** This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Agreement conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Agreement which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**14. Borrower's Copy.** Borrower shall be given one copy of the Agreement and of this Deed of Trust.

**15. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

**16. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the

Agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Deed of Trust, and Borrower's obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

**17. Hazardous Substances.** As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**18. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

**19. Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all Agreements evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee)



for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

**20. Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

THE OPEN WINDOW PROJECT, LLC,  
a California Limited Liability Company

BY:  \_\_\_\_\_

Print Name: Zackary Court

Title: Manager

APPROVED AS TO FORM:  
JOHN M. LUEBBERKE  
CITY ATTORNEY

BY:  \_\_\_\_\_  
DEPUTY CITY ATTORNEY

## EXHIBIT "A"

### LEGAL DESCRIPTION

APN: 139-250-06

Lots 1, 3 and the West 40 feet of Lot 5 in Block 74 East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Joaquin )

On May 15, 2017 before me, Susan Lynn Will, Notary Public  
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan Lynn Will (Seal)





RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Stockton  
Economic Development Department  
425 N. El Dorado Street  
Stockton, CA 95202

Attn: Janice Miller

APN: 139-250-08

No Fee Document Government Code § 27383

## DEED OF TRUST

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) **“Deed of Trust”** means this document, which is dated May 16, 2017, together with all Riders to this document.

(B) **“Borrower”** is The Open Window Project, LLC, a California Limited Liability Company. Borrower is the trustor under this Deed of Trust.

(C) **“Lender”** is City of Stockton, a municipal corporation. Lender’s address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) **“Trustee”** is City of Stockton, a municipal corporation.

(E) **“Agreement”** means the Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement signed by Borrower and dated May 15, 2017. The Amended Agreement states that Borrower owes City seven-hundred sixty thousand and 00/100 Dollars (\$760,000.00).

(F) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”

(G) **“Loan”** means the debt evidenced by the Agreement, plus all sums due under this Deed of Trust.

(H) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

**(I) "Miscellaneous Proceeds"** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

**(J) "RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

**(K) "Successor in Interest of Borrower"** means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Agreement and/or this Deed of Trust.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Agreement; and (ii) the performance of Borrower's covenants and agreements under this Deed of Trust and the Agreement. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit "A"

Which currently has the address of 532 E Miner Street, Stockton, California 95202 ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the "Property."

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal.** Borrower shall pay when due the principal of the debt evidenced by the Agreement and any additional amounts due under the Agreement. Payment due under the Agreement and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Agreement or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Agreement and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Agreement or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Agreement and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Agreement; (b) principal due under the Agreement; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Agreement shall not extend or postpone the due date.

Borrower is allowed to submit early payment of the first 20% of the \$3.8 million, which equals \$760,000, without the Borrower first obtaining building permits for the public infrastructure improvements and Phase I of the Project.

**3. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

In return for releasing \$760,000 of the approved funding, Borrower agrees that City may place liens on the seven (7) properties described in the Amended Agreement as security. Liens will remain in place until such time that the Borrower has provided written verification, acceptable to the Lender, that it has secured financing for Phase I of the Project OR that building permits for both the public infrastructure improvements and Phase I has been issued, whichever occurs first.

**4. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower

further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Agreement or this Deed of Trust, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Agreement or this Deed of Trust whether or not then due.

**5. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.



Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**6. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the property as Borrower's place of business.

**7. Protection of Lender's Interest in the Property and Rights Under this Deed of Trust.** If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

**8. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be

required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to

commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**10. Joint and Several Liability; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower's obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

**11. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Agreement). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**12. Notices.** All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address

under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

**13. Governing Law; Severability; Rules of Construction.** This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Agreement conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Agreement which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**14. Borrower's Copy.** Borrower shall be given one copy of the Agreement and of this Deed of Trust.

**15. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

**16. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the

Agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Deed of Trust, and Borrower's obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

**17. Hazardous Substances.** As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**18. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

**19. Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all Agreements evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee)

for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

**20. Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

THE OPEN WINDOW PROJECT, LLC,  
a California Limited Liability Company

BY:  \_\_\_\_\_

Print Name: Zachary Cost

Title: President

APPROVED AS TO FORM:  
JOHN M. LUEBBERKE  
CITY ATTORNEY

BY:  \_\_\_\_\_  
DEPUTY CITY ATTORNEY

## EXHIBIT "A"

### LEGAL DESCRIPTION

APN: 139-250-08

Lot 5, except the West 40 feet (Carpenter's Measurement) and all of that portion of Lot 7 lying North of the South line of Miner Channel in Block 74 East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Joaquin )

On May 15, 2017 before me, Susan Lynn Will, Notary Public  
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan L Will (Seal)



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Stockton  
Economic Development Department  
425 N. El Dorado Street  
Stockton, CA 95202

Attn: Janice Miller

APN: 139-250-23

No Fee Document Government Code § 27383

## DEED OF TRUST

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) **“Deed of Trust”** means this document, which is dated May 16, 2017, together with all Riders to this document.

(B) **“Borrower”** is The Open Window Project, LLC, a California Limited Liability Company. Borrower is the trustor under this Deed of Trust.

(C) **“Lender”** is City of Stockton, a municipal corporation. Lender’s address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) **“Trustee”** is City of Stockton, a municipal corporation.

(E) **“Agreement”** means the Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement signed by Borrower and dated May 15, 2017. The Amended Agreement states that Borrower owes City seven-hundred sixty thousand and 00/100 Dollars (\$760,000.00).

(F) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”

(G) **“Loan”** means the debt evidenced by the Agreement, plus all sums due under this Deed of Trust.

(H) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) **“Miscellaneous Proceeds”** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) **“RESPA”** means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(K) **“Successor in Interest of Borrower”** means any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Agreement and/or this Deed of Trust.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Agreement; and (ii) the performance of Borrower’s covenants and agreements under this Deed of Trust and the Agreement. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit “A”

Which currently has the address of 221 North American Street, Stockton, California 95202 (“Property Address”)

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the “Property.”

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal.** Borrower shall pay when due the principal of the debt evidenced by the Agreement and any additional amounts due under the Agreement. Payment due under the Agreement and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Agreement or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Agreement and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Agreement or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Agreement and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Agreement; (b) principal due under the Agreement; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Agreement shall not extend or postpone the due date.

Borrower is allowed to submit early payment of the first 20% of the \$3.8 million, which equals \$760,000, without the Borrower first obtaining building permits for the public infrastructure improvements and Phase I of the Project.

**3. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

In return for releasing \$760,000 of the approved funding, Borrower agrees that City may place liens on the seven (7) properties described in the Amended Agreement as security. Liens will remain in place until such time that the Borrower has provided written verification, acceptable to the Lender, that it has secured financing for Phase I of the Project OR that building permits for both the public infrastructure improvements and Phase I has been issued, whichever occurs first.

**4. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower

further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Agreement or this Deed of Trust, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Agreement or this Deed of Trust whether or not then due.

**5. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**6. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the property as Borrower's place of business.

**7. Protection of Lender's Interest in the Property and Rights Under this Deed of Trust.** If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

**8. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be

required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to



commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**10. Joint and Several Liability; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower's obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

**11. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Agreement). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**12. Notices.** All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address

under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

**13. Governing Law; Severability; Rules of Construction.** This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Agreement conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Agreement which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**14. Borrower's Copy.** Borrower shall be given one copy of the Agreement and of this Deed of Trust.

**15. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

**16. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the

Agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Deed of Trust, and Borrower's obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

**17. Hazardous Substances.** As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**18. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

**19. Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all Agreements evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee)

for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

**20. Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

THE OPEN WINDOW PROJECT, LLC,  
a California Limited Liability Company

BY:  \_\_\_\_\_

Print Name: Zachary Cox \_\_\_\_\_

Title: President \_\_\_\_\_

APPROVED AS TO FORM:  
JOHN M. LUEBBERKE  
CITY ATTORNEY

BY:  \_\_\_\_\_  
DEPUTY CITY ATTORNEY

## EXHIBIT "A"

### LEGAL DESCRIPTION

APN: 139-250-23

The Easterly 100 feet of Lot 16 in Block 74 of East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.

Excepting therefrom all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet beneath the surface of said land, without the right of surface entry, as reserved in the deed from the trustees for Iroquois Tribe No. 35, improved order of Redmen, recorded November 12, 1991 as Instrument No. 91110385, San Joaquin County Records.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Joaquin )

On May 15, 2017 before me, Susan Lynn Will, Notary Public  
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan Lynn Will (Seal)



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:



City of Stockton  
Economic Development Department  
425 N. El Dorado Street  
Stockton, CA 95202

Attn: Janice Miller

APN: 139-250-27

No Fee Document Government Code § 27383

## DEED OF TRUST

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) **“Deed of Trust”** means this document, which is dated May 16, 2017, together with all Riders to this document.

(B) **“Borrower”** is The Open Window Project, LLC, a California Limited Liability Company. Borrower is the trustor under this Deed of Trust.

(C) **“Lender”** is City of Stockton, a municipal corporation. Lender’s address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) **“Trustee”** is City of Stockton, a municipal corporation.

(E) **“Agreement”** means the Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement signed by Borrower and dated May 15, 2017. The Amended Agreement states that Borrower owes City seven-hundred sixty thousand and 00/100 Dollars (\$760,000.00).

(F) **“Property”** means the property that is described below under the heading “Transfer of Rights in the Property.”

(G) **“Loan”** means the debt evidenced by the Agreement, plus all sums due under this Deed of Trust.

(H) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.



(I) **“Miscellaneous Proceeds”** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) **“RESPA”** means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(K) **“Successor in Interest of Borrower”** means any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Agreement and/or this Deed of Trust.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Agreement; and (ii) the performance of Borrower’s covenants and agreements under this Deed of Trust and the Agreement. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit “A”

Which currently has the address of 544 E Miner Street, Stockton, California 95202 (“Property Address”)

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the “Property.”

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal.** Borrower shall pay when due the principal of the debt evidenced by the Agreement and any additional amounts due under the Agreement. Payment due under the Agreement and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Agreement or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Agreement and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Agreement or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Agreement and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Agreement; (b) principal due under the Agreement; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Agreement shall not extend or postpone the due date.

Borrower is allowed to submit early payment of the first 20% of the \$3.8 million, which equals \$760,000, without the Borrower first obtaining building permits for the public infrastructure improvements and Phase I of the Project.

**3. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

In return for releasing \$760,000 of the approved funding, Borrower agrees that City may place liens on the seven (7) properties described in the Amended Agreement as security. Liens will remain in place until such time that the Borrower has provided written verification, acceptable to the Lender, that it has secured financing for Phase I of the Project OR that building permits for both the public infrastructure improvements and Phase I has been issued, whichever occurs first.

**4. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower

further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Agreement or this Deed of Trust, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Agreement or this Deed of Trust whether or not then due.

**5. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**6. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the property as Borrower's place of business.

**7. Protection of Lender's Interest in the Property and Rights Under this Deed of Trust.** If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

**8. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be

required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to

commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**10. Joint and Several Liability; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower's obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

**11. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Agreement). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**12. Notices.** All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address

under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

**13. Governing Law; Severability; Rules of Construction.** This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Agreement conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Agreement which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**14. Borrower's Copy.** Borrower shall be given one copy of the Agreement and of this Deed of Trust.

**15. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

**16. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the



Agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Deed of Trust, and Borrower's obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

**17. Hazardous Substances.** As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**18. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

**19. Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all Agreements evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee)

for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

**20. Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

THE OPEN WINDOW PROJECT, LLC,  
a California Limited Liability Company

BY: 

Print Name: Zachary Cort

Title: President

APPROVED AS TO FORM:  
JOHN M. LUEBBERKE  
CITY ATTORNEY

BY:   
DEPUTY CITY ATTORNEY

## EXHIBIT "A"

### LEGAL DESCRIPTION

APN: 139-250-27

Parcel 4A:

That portion of Lots 9 and 11 in Block 74, East of Center Street in the City of Stockton according to the Official Map or Plat thereof, lying North of South line of Miner Channel or Slough as shown on Map of H.T. Compton Jr., City Surveyor on file in City Clerk's Office of City of Stockton, County of San Joaquin, State of California.

Parcel 4B:

A portion of Lot 11 in Block 74, East of Center Street, in said City of Stockton according to the Official Map or Plat thereof commencing at the Northeast corner of said Lot; running thence South 40 feet; thence Westerly parallel with Miner Avenue, 50 feet more or less to Bulkhead as per H. T Compton Map; thence Northeasterly along line of Bulkhead to Miner Avenue; thence East along South line of Miner Avenue to place of beginning.

Parcel 4C:

A portion of Lots 9 and 11 in Block 74, East of Center Street in the City of Stockton, according to the Official Map or Plat thereof, described as that portion of South 10 feet of the North 50 feet of each of Lots 9 and 11, lying South of line of waterway belonging to City of Stockton as established by H.T. Compton, Surveyor in Plat Book on file in the City Clerk's Office.

Parcel 4D:

The South ½ of Lot 11 and all those portions of Lot 9 lying South of Miner Channel in Block 74, East of Center Street in the City of Stockton according to the Official Map or Plat thereof.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Joaquin )

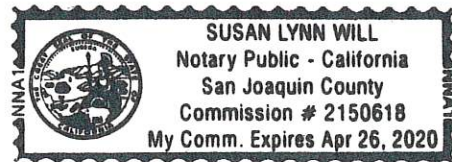
On May 15, 2017 before me, Susan Lynn Will, Notary Public  
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan Lynn Will (Seal)



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:



City of Stockton  
Economic Development Department  
425 N. El Dorado Street  
Stockton, CA 95202

Attn: Janice Miller

APN: 139-290-04, -05, &-06

No Fee Document Government Code § 27383

## DEED OF TRUST

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) **“Deed of Trust”** means this document, which is dated May 16, 2017, together with all Riders to this document.

(B) **“Borrower”** is The Open Window Project, LLC, a California Limited Liability Company. Borrower is the trustor under this Deed of Trust.

(C) **“Lender”** is City of Stockton, a municipal corporation. Lender’s address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) **“Trustee”** is City of Stockton, a municipal corporation.

(E) **“Agreement”** means the Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement signed by Borrower and dated May 15, 2017. The Amended Agreement states that Borrower owes City seven-hundred sixty thousand and 00/100 Dollars (\$760,000.00).

(F) **“Properties”** means the properties that is described below under the heading “Transfer of Rights in the Properties.”

(G) **“Loan”** means the debt evidenced by the Agreement, plus all sums due under this Deed of Trust.

(H) **“Applicable Law”** means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) **“Miscellaneous Proceeds”** means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Properties; (ii) condemnation or other taking of all or any part of the Properties; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Properties.

(J) **“RESPA”** means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(K) **“Successor in Interest of Borrower”** means any party that has taken title to the Properties, whether or not that party has assumed Borrower’s obligations under the Agreement and/or this Deed of Trust.

#### TRANSFER OF RIGHTS IN PROPERTIES

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Agreement; and (ii) the performance of Borrower’s covenants and agreements under this Deed of Trust and the Agreement. The restrictions will automatically terminate if the title to the mortgaged properties is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described three properties located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit “A”

Which currently has the addresses of 210 North American Street, 617 & 621 East Channel Street, Stockton, California 95202 (“Property Addresses”)

TOGETHER WITH all the improvements now or hereafter erected on the Properties, and all easements, appurtenances, and fixtures now or hereafter a part of the Properties. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the “Properties.”

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Properties and that the Properties is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Properties against all claims and demands, subject to any encumbrances of record.

THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

**1. Payment of Principal.** Borrower shall pay when due the principal of the debt evidenced by the Agreement and any additional amounts due under the Agreement. Payment due under the Agreement and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Agreement or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Agreement and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Agreement or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Agreement and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Agreement; (b) principal due under the Agreement; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Agreement shall not extend or postpone the due date.

Borrower is allowed to submit early payment of the first 20% of the \$3.8 million, which equals \$760,000, without the Borrower first obtaining building permits for the public infrastructure improvements and Phase I of the Project.

**3. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Properties which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Properties, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Properties is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.



Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

In return for releasing \$760,000 of the approved funding, Borrower agrees that City may place liens on the seven (7) properties described in the Amended Agreement as security. Liens will remain in place until such time that the Borrower has provided written verification, acceptable to the Lender, that it has secured financing for Phase I of the Project OR that building permits for both the public infrastructure improvements and Phase I has been issued, whichever occurs first.

**4. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Properties insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Properties, or the contents of the Properties, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Properties, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower

further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Properties, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Properties to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Properties, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Properties under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Agreement or this Deed of Trust, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Properties, insofar as such rights are applicable to the coverage of the Properties. Lender may use the insurance proceeds either to repair or restore the Properties or to pay amounts unpaid under the Agreement or this Deed of Trust whether or not then due.

**5. Preservation, Maintenance and Protection of the Properties; Inspections.** Borrower shall not destroy damage or impair the Properties, allow the Properties to deteriorate or commit waste on the Properties. Borrower shall maintain the Properties in order to prevent the Properties from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Properties if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Properties, Borrower shall be responsible for repairing or restoring the Properties only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Properties, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Properties. If it has reasonable cause, Lender may inspect the interior of the improvements on the Properties. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**6. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Properties as Borrower's place of business.

**7. Protection of Lender's Interest in the Properties and Rights Under this Deed of Trust.** If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender's interest in the Properties and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Properties, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Properties and rights under this Deed of Trust, including protecting and/or assessing the value of the Properties, and securing and/or repairing the Properties. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Properties and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Properties includes, but is not limited to, entering the Properties to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

**8. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Properties is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Properties, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Properties to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable

Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Properties, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Properties in which the fair market value of the Properties immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Properties immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Properties in which the fair market value of the Properties immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Properties is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Properties or to the sums secured by this Deed of Trust, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender's judgment, could result in forfeiture of the Properties or other material impairment of Lender's interest in the Properties or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Properties or other material impairment of Lender's interest in the Properties or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Properties are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Properties shall be applied in the order provided for in Section 2.

**9. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability

of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**10. Joint and Several Liability; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower's obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

**11. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Properties and rights under this Deed of Trust, including, but not limited to, attorneys' fees, property inspections and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Agreement). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**12. Notices.** All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Addresses unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address

through that specified procedure. There may be only once designated notice address under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

**13. Governing Law; Severability; Rules of Construction.** This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Properties are located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Agreement conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Agreement which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**14. Borrower's Copy.** Borrower shall be given one copy of the Agreement and of this Deed of Trust.

**15. Transfer of the Properties or a Beneficial Interest in Borrower.** As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Properties, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Properties or any Interest in the Properties is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

**16. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Properties pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a)

pays Lender all sums which then would be due under this Deed of Trust and the Agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Properties and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Properties and rights under this Deed of Trust, and Borrower's obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

**17. Hazardous Substances.** As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Properties is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Properties. Borrower shall not do, nor allow anyone else to do, anything affecting the Properties: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Properties. The preceding two sentences shall not apply to the presence, use or storage on the Properties of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Properties (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Properties and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Properties. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Properties is necessary, Borrower shall promptly take all necessary remedial actions in accordance with

Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

**18. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Properties. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Properties to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Properties are located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Properties at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Properties by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Properties at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Properties without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

**19. Reconveyance.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Properties and shall surrender this Deed of Trust and all Agreements evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Properties without warranty to the person or persons legally



entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Properties, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

**20. Statement of Obligation Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

THE OPEN WINDOW PROJECT, LLC,  
a California Limited Liability Company

BY: 

Print Name: Zachary Court

Title: President

APPROVED AS TO FORM:  
JOHN M. LUEBBERKE  
CITY ATTORNEY

BY:   
DEPUTY CITY ATTORNEY

## EXHIBIT "A"

### LEGAL DESCRIPTION

APN: 139-290-04, -05, -06

Lots 2, 4 and 6 in Block 75, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Joaquin )

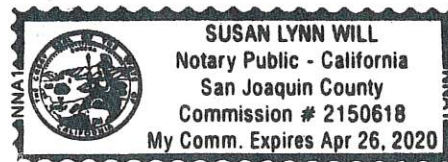
On May 15, 2017 before me, Susan Lynn Will, Notary Public  
(insert name and title of the officer)

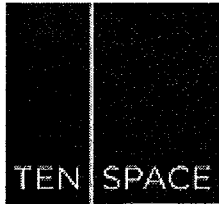
personally appeared Lackey Court,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s)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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan Lynn Will (Seal)





110 N San Joaquin Street, 5<sup>th</sup> floor  
Stockton, CA 95202  
209.469.2678  
info@tenspacedev.com

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www.tenspacedev.com

December 2, 2016

Kurt Wilson, City Manager  
City of Stockton  
425 N. El Dorado Street  
Stockton, CA 95202

Dear Mr. Wilson,

This letter shall serve as a statement of support for the City of Stockton Downtown Coalition's application for assessment funding from the U.S. EPA Brownfields Assessment, Cleanup and Revolving Loan Program.

I understand that the funds are to be used to inventory, prioritize and plan for clean-up and reuse of brownfields sites in the waterfront and western downtown areas.

As a leading real estate company located in downtown Stockton, Ten Space marries investment in real estate with investment in people and local economies by crafting complete-community building strategies. We reinvigorate existing urban areas by creating pedestrian-friendly neighborhoods with retail, entertainment and commerce where individuals can live and work. By deploying sustainable building practices through the rehabilitation of existing structures and construction of new mixed-use buildings, Ten Space transforms and enlivens neighborhoods from the ground up.

Contained within the City's proposed brownfields assessment area sits the 15-square block Open Window Project, a Ten Space infill development project, proposed to include 1,400 residential dwelling units with 200,000 square feet of retail and flex space, 90,000 square feet of commercial office space, and 110,000 square feet of industrial art warehouse and studio space – totaling 400,000 square feet of non-residential floor area. Of the parcels included in the project area, three are owned by the City of Stockton and five are owned by the Parking Authority of the City of Stockton. The Open Window Project desires to purchase the subject properties at fair market value.

While redevelopment of several public projects has occurred downtown in recent years, mixed-use residential redevelopment has been lacking due to the high cost to perform environmental work and develop each site - many of which were formerly industrial uses. Having an inventory of hazard-free development areas to market will serve as a catalyst to attract new pedestrian-friendly development to the downtown core, thus supporting additional employment opportunities and enhancing the economic stability of our area. We are committed to doing our part in this renaissance.

Sincerely,

A handwritten signature in black ink, appearing to read "Zac Cort", written in a cursive style.

Zac Cort  
President and Chief Executive Officer