

After Recording Return To:
 City of Stockton
 Community Development Department
 Planning & Engineering Services Div.
 425 North El Dorado Street
 Stockton CA 95202

SUBDIVISION AGREEMENT
 (FINAL MAP)

THIS AGREEMENT is made and entered into as of _____ by and between the CITY OF STOCKTON, hereafter referred to as "CITY," and BEVERLY GROUP, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, hereinafter referred to as "SUBDIVIDER."

W I T N E S S E T H:

WHEREAS, Subdivider has presented to City for approval a final subdivision map (hereinafter called "MAP") entitled **MARKETPLACE AT WESTON RANCH -- TRACT NO. 3749 (TM 15-08)** which Map has been checked and approved by the County Surveyor; and

WHEREAS, said Map has been filed with the City Engineer for presentation to the City Council of the City for its approval, which Map is hereby referred to and incorporated herein; and

WHEREAS, Subdivider has requested approval of said Map prior to the construction and completion of improvements, including all streets, highways or public ways and public utility facilities which are a part of, or appurtenant to, the subdivision (hereinafter called "subdivision") designated in the Map, all in accordance with, and as required by, the plans and specifications for all or any of said improvements in, appurtenant to, or outside the limits of subdivision, which plans and specifications (3232C) dated 4/12/1989, prepared by Thompson Hysell Engineers, and consisting of Sheets 1 through 104 are now on file in the Office of the City Engineer; and

WHEREAS, this agreement is executed pursuant to the provisions of the Subdivision Map Act of the State of California and Title 16, Division 6, of the Stockton Municipal Code.

NOW, THEREFORE, for and in consideration of these premises and the approval of said Map and of the acceptance of the dedications, or some thereof, therein offered, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under said Subdivision Map Act and said Municipal Code, the parties hereto agree as follows:

1. PERFORMANCE OF WORK

Subdivider shall construct or cause to be constructed, at Subdivider's own expense, in a good and worklike manner, under the direction and to the satisfaction of the City Engineer, all of the following work and improvements within the subdivision, to-wit:

Those certain improvements designated and shown on said Map as streets, curbs, gutters, sanitary sewers, storm sewers, water mains, street lights, sidewalks, and other on or off-site improvements in

accordance with the plans and specifications on file in the office of City Engineer together with any changes required or ordered by said Engineer, which in the Engineer's opinion, are necessary or required to complete the work.

2. WORK: PLACES AND GRADES TO BE FIXED BY ENGINEER

All of said work is to be done to the satisfaction of the City Engineer, and to the grades as shown upon the approved plans and specifications on file in the Office of the City Engineer. Subdivider warrants that construction will not adversely affect any portion of adjacent properties.

3. WORK: TIME FOR COMMENCEMENT AND PERFORMANCE

At least seventy-two (72) hours prior to the commencement of any work hereunder, Subdivider shall notify City Engineer in writing of the date fixed by Subdivider for commencement thereof, so that City Engineer shall be able to provide services of inspection.

Subdivider will complete, or cause to be completed, within two (2) years of approval of said Map and construction plans by the City Council, all improvements in accordance with the plans and specifications on file as hereinbefore specified, including any changes required or ordered by the said Engineer.

The work shall be performed in a safe and good worklike manner, and enough workers to quickly and adequately perform the work in accordance with normal construction standards for similar jobs shall be employed and used. All work must comply with State of California, Division of Industrial Safety Construction Orders.

Except during an emergency, as determined by the City Engineer, all work shall be performed between the hours of 7:00 a.m. and 9:00 p.m.

Any contractor not performing as required by this agreement may, at the discretion of the City Engineer, be barred from doing any work within the City of Stockton on any subdivision or any public works project for a maximum period of two (2) years.

City may require Subdivider to furnish a licensed Soils Engineer to test and certify that all cuts, fills and trench backfill conform to the requirements of City and State codes.

4. TIME OF ESSENCE: EXTENSION

Time is of the essence of this agreement; provided that in the event good cause is shown, the City Council may extend the time for completion of the improvements hereunder. Any such extension may be granted without notice to the Subdivider's surety, and extensions so granted shall not release or modify the surety's liability on the bond to secure the faithful performance of this agreement, or the payment for labor and materials.

5. REPAIRS AND REPLACEMENTS

Subdivider shall replace, or have replaced, or repair or have repaired, as the case may be, all pipes and monuments shown on the map which have been destroyed or damaged, and Subdivider shall replace or have replaced, repair or have repaired, as the case may be, or pay the owner, the entire cost of replacement or repairs, of any and all property damaged or destroyed by

reason of any work done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California or any agency or political subdivision thereof, or by the City or by any public or private corporation, or by any person whomsoever, or by any combination of such owners. Any such repair or replacement shall be to the satisfaction, and subject to the approval of the City Engineer.

6. UTILITY DEPOSITS: STATEMENT

Subdivider shall make all deposits legally required by each public utility corporation for the connection of any and all public utilities to be supplied by such public utility corporation within the subdivision.

7. PERMITS: COMPLIANCE WITH LAW

Subdivider shall, at Subdivider's expense, obtain all necessary permits and licenses for the construction of such improvements, give all necessary notices and pay all fees and taxes required by law.

8. SUPERINTENDENCE BY SUBDIVIDER

Subdivider shall give personal superintendence to the work on said improvement, or have a competent foreman or superintendent, satisfactory to the City Engineer, on the work at all times during progress, with authority to act for Subdivider.

9. INSPECTION BY CITY

Subdivider shall at all times maintain proper facilities, and provide safe access for inspection by City, to all parts of the work, and to the shops wherein the work is in preparation.

10. CONTRACT SECURITY

Concurrently with the execution hereof, Subdivider shall furnish:

- A. A cash bond guaranteeing payment for placing monuments in the amount of (0 Monuments)..... \$0.00
- B. A surety bond, cash deposit or letter of credit (50% of the public improvements cost) as security for the faithful performance of this agreement in the amount of \$0.00
- C. A separate security bond, cash deposit or letter of credit (50% of the public improvements cost) as security for the payment of all persons performing labor and furnishing materials in connection with this agreement in the amount of \$0.00

The surety on each of said bonds shall be a corporate surety company authorized to transact business in the State of California, and the form thereof shall be satisfactory to the City Attorney and the Administrative Services Officer. Release of securities shall be as follows:

A. Security given for faithful performance shall be released after the City has finally accepted the work, and provided that security of at least ten (10) percent of the public improvements cost has been retained or security has been furnished to the City to guarantee and warrant the work for 1-year following the date of such acceptance of the work.

B. Security securing the payment to the contractor, the subcontractors of the contractor, and to persons furnishing labor, materials or equipment shall be released sixty (60) days after recording the Notice of Completion provided that the City has finally accepted the work and provided no claims or liens have been filed with the City. If claims of lien have been filed, an amount of security at least equal to the claims shall be retained pending the outcome of the claims.

C. The security guaranteeing that the completed work remains satisfactory during the required 1-year warranty period shall be released upon correction, by Subdivider, of any defects in the work existing at the end of the warranty period.

D. Monument security shall be released in accordance with the provisions of Section 66497 of the Government Code.

In the event that improvements do not conform to the plans and specifications or defects are not corrected within the time limit specified by the City, the City shall have the authority to order the necessary work done and to recover the cost of such work as well as any costs of enforcing such obligation, including attorney fees, from the Subdivider and the Subdivider's surety or the financial institution providing the Instrument of Credit.

11. INDEMNITY AND HOLD HARMLESS AGREEMENT

With the exception that this section shall in no event be construed to require indemnification by SUBDIVIDER to a greater extent than permitted under the public policy of the State of California, SUBDIVIDER shall, indemnify, protect, defend with counsel approved by CITY and at SUBDIVIDER'S sole cost and expense, and hold harmless CITY, its Mayor, Council, officials, representatives, agents employees and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and subdivider fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, state, or municipal law or ordinance, or CITY Policy, by SUBDIVIDER or SUBDIVIDER'S officers, agents, employees, volunteers or subcontractors. SUBDIVIDER shall not be obligated to indemnify or defend CITY for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the CITY. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of SUBDIVIDER to CITY, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by SUBDIVIDER under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by SUBDIVIDER to a greater extent than permitted under the public policy of the State of California, the parties agree that SUBDIVIDER'S duty to defend CITY is immediate and arises upon the filing of any claim against the CITY for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under

this Agreement by SUBDIVIDER or SUBDIVIDER'S officers, agents, employees, volunteers or subcontractors. SUBDIVIDER'S duties and obligations to defend the CITY shall apply regardless of whether or not the issue of the CITY'S liability, breach of this Agreement, or other obligation or fault has been determined. SUBDIVIDER shall be immediately obligated to pay for CITY'S defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert subdivider and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the CITY, CITY will then reimburse SUBDIVIDER for amounts paid in excess of SUBDIVIDER'S proportionate share of responsibility for the damages within 30 days after SUBDIVIDER provides CITY with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures SUBDIVIDER is not obligated to defend or indemnify CITY in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by SUBDIVIDER to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, SUBDIVIDER shall indemnify, defend, and hold harmless CITY its Mayor, Council, officials, representatives, agents employees and volunteers from and against all claims, losses, expenses, and costs including but not limited to attorneys' fees, arising out of any claim brought against the CITY by an employee, office, agent, or volunteer of SUBDIVIDER, regardless of whether such claim may be covered by any applicable workers compensation insurance. SUBDIVIDER'S indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the SUBDIVIDER under workers' compensation acts, disability acts, or other employee benefit acts.

INSURANCE REQUIREMENTS

Subdivider shall comply with the insurance requirements set forth in Exhibit B.

12. TITLE TO IMPROVEMENTS

Title to, and ownership of, all improvements constructed hereunder by Subdivider shall vest absolutely in City, upon completion and acceptance of such improvements by City, except as otherwise may be provided in this agreement. Prior to final acceptance by the City, the Subdivider shall submit to the City Engineer accurately revised "as built" plans showing all the sanitary, storm and water lateral locations, monuments with tie notes and unit prices and quantities of the underground sewer, storm drainage, water, street lighting and street facilities installed as part of this subdivision unit.

13. REPAIR OR RECONSTRUCTION OF DEFECTIVE WORK

If, within a period of one (1) year after final acceptance of the work performed under this agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Subdivider, or any of the work done under this agreement, fails to fulfill any of the requirements of this agreement or the specifications referred to herein, Subdivider shall without delay and without any cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Subdivider fail to act within thirty (30) days after written notice or in case of emergency, City may, at its option, make the necessary repairs or replacements or perform the necessary work and Subdivider shall pay to City the actual cost of such repairs plus twenty-five (25) percent as administrative costs. In

accordance with Section 16.72.070 of the Stockton Municipal Code, the subdivider shall deposit \$0.00 with the City to correct deficiencies and conditions caused by the Subdivider or contractor during or after the construction of this subdivision.

14. SUBDIVIDER NOT AGENT OF CITY

Subdivider or any of Subdivider's agents or contractors are not or shall not be considered agents of City in connection with the performance of Subdivider's obligations under this agreement.

15. COST OF ENGINEERING AND INSPECTION

Prior to commencement of construction, the Subdivider shall pay to the City of Stockton the cost for the checking of engineering plans, inspection of the work, and the checking and testing of the materials at the appropriate existing rate. The cost of such improvements is based on an approved estimate, or on the construction contract, if awarded prior to filing of the map with the City Council.

<u>Plan Checking Fee</u>	=	\$0.00
<u>Inspection Fee</u>	=	\$0.00

No work shall be performed without inspection by the City. Any work performed without an inspection will not be accepted by the City.

All work, which requires inspection, shall be performed during the City's normal working hours and work days. If any work is performed before 8:00 a.m., after 5:00 p.m., or on a City holiday, or on a weekend, there must be a request in writing twenty-four (24) hours in advance for an inspector during those hours, and there must be paid to the City double the Inspector's hourly cost to the City. This payment is not included in the 3.5 percent (3.5%) engineering and inspection fee.

If an inspector is not available to work during such hours, as requested, no work shall be performed during those hours.

16. FILING FEES

Concurrently with execution hereof, Subdivider shall pay a computer mapping fee of \$169.00 (\$148 + \$3/lot), a map filing fee of \$3,526.00 and, present one check for recording the Map and the agreement, payable to the San Joaquin County Recorder in the amount of \$93.00 and \$149.00, respectively. City will forward the checks with the Map for recording.

17. NOTICE OF BREACH AND DEFAULT

If Subdivider refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, or if the Subdivider should be adjudged a bankrupt, or Subdivider should make a general assignment for the benefit of Subdivider's creditors, or if a receiver should be appointed in the event of Subdivider insolvency, or if Subdivider, or any of Subdivider's contractors, subcontractors, agents, or employees should violate any of the provisions of this agreement, City Engineer or City Council may serve written notice upon Subdivider and Subdivider's surety of breach of this agreement or of any portion thereof and default of Subdivider.

18. BREACH OF AGREEMENT: PERFORMANCE BY SURETY OR CITY

In the event of any such notice, Subdivider's surety shall have the duty to take over and complete the work and the improvements herein specified; provided, however, that if the surety, within ten (10) days after the serving upon it of such notice of breach does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within ten (10) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Subdivider, and Subdivider's surety shall be liable to City for the cost and damages occasioned City thereby; and, in such event, City without liability for so doing may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Subdivider as may be on the site of the work and necessary therefor. The City reserves to itself all remedies available to it at law or in equity for breach of Subdivider's obligations under this Agreement. The right of City to draw upon or utilize the security is additional to and not in lieu of any other remedy available to City. In the event that Subdivider fails to perform any obligations hereunder, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligations, including costs of suit and reasonable attorney fees.

19. NOTICES

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

CITY ENGINEER
22 E. WEBER AVENUE
STOCKTON CA 95202

Notices required to be given to Subdivider shall be addressed as follows:

BEVERLY GROUP, LLC
4040 MACARTHUR BOULEVARD, SUITE 250
NEWPORT BEACH CA 92660

Notices required to be given to surety of Subdivider shall be addressed as follows:

Provided that any party or the surety may change such address by notice in writing to the other party and, thereafter, notices shall be addressed and transmitted to the new address.

20. FIRE PROTECTION

No building permits will be issued in this subdivision until the water system has been completed and tested and all access streets installed and made serviceable. This provision may be modified or waived if an alternate method of providing fire protection is provided and approved by

the Stockton Fire Department.

21. STREET TREE SECURITY

The Subdivider shall provide a faithful performance bond, cash deposit, or letter of credit for 125% of the street tree fee based on \$195 per tree.

Street Tree Security: 0 trees @ \$195 ea. X 125% = \$0.00

22. STREET NAME SIGN FEE

The Subdivider shall pay a street name sign fee based on \$286.25 per sign to be furnished and installed by the City.

Street Name Sign Fee: 0 signs @ \$286.25 ea. = \$0.00

23. SUMMARY OF FEES

The fees mentioned in this Agreement are summarized in Exhibit A attached hereto and incorporated herein by reference. However, some fees such as the Public Facilities Fee and Parkland Fee, which are collected at the building permit stage, are not included in this summary.

24. BINDING UPON SUCCESSORS

This agreement shall be binding upon and inure to the benefit of, and be enforceable by and against, the heirs, successors, and assigns of the parties hereto, subject to the terms hereof.

25. ASSIGNMENT

Subdivider shall have the right to assign (by sale, transfer, or otherwise) directly or indirectly, all or part of its rights, duties and obligations under this agreement as to any portion or all of the Property upon a specific written request and written consent by the City Manager which shall not be unreasonably withheld, delayed or conditioned. Except that Subdivider may, without the consent of the City, assign the Agreement to a controlled subsidiary of that party or a purchaser of all or substantially all of that party's assets used in connection with performing this Agreement, provided the assigning party guarantees the performance of and causes the assignee to assume in writing all obligations of the assignor under this Agreement. Notice of an assignment to a controlled subsidiary of that party or a purchaser of all or substantially all of that party's assets shall be given to the City in writing within 30 days of such change. Upon any such assignments, the Subdivider shall be released from its obligations under this agreement and shall receive the immediate return of all security deposits, including, but not limited to bonds, letters of credit, security instruments or any other financial commitments upon the replacement of same by the assignee. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties.

26. SPECIAL PROVISIONS

All the tentative map conditions in TM18-04 A&B as shown in Exhibit C (attached) shall apply to this subdivision agreement.

ATTEST:

CHRISTIAN CLEGG
DEPUTY CITY MANAGER/CITY CLERK

CITY OF STOCKTON:

KURT WILSON
CITY MANAGER

By _____

By _____

APPROVED AS TO FORM:

BEVERLEY GROUP, LLC

OFFICE OF THE CITY ATTORNEY

JAMES RIGHEIMER
(PRINT NAME)

BY _____
CITY ATTORNEY

BY _____
(SIGNATURE)
MANAGING MEMBER
(TITLE)

APPROVED BY CITY COUNCIL RESOLUTION NO. _____,
ON _____, 20____.

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 ORANGE

On 11.28.18 before me, TRISTAN HARRIS, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared JAMES RIGHEIMER
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  (Seal)



(ATTACH NOTARY FOR SUBDIVIDER)

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 _____)

On _____ before me, _____
(insert name and title of the officer)

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.

Signature _____ (Seal)

(NOTARY FOR CITY MANAGER)

EXHIBIT A

SUMMARY OF FEES AND BONDS

STREET NAME SIGN FEE	\$0.00
PLAN CHECK FEE	\$0.00
INSPECTION FEE.....	\$0.00
MATERIAL TESTING FEE.....	\$0.00
FILING FEE.....(PREPAID \$3,526.00).....	\$0.00
TECH FEE.....(PREPAID \$277.13).....	\$0.00
CRS FEE.....(PREPAID \$221.70)	\$0.00
CASH DEPOSIT	\$0.00
COMPUTER MAPPING FEE.....(PREPAID \$169.00)	\$0.00
MUD IMAGING FEE.....	\$0.00
ASSESSMENT DISTRICT SEGREGATION.....	\$0.00
TOTAL.....	\$0.00

RECORDING FEE (payable to San Joaquin County Recorder)

MAP (4 Sheets).....	\$93.00
AGREEMENT (21 Sheets)	\$149.00
TOTAL	\$242.00

BONDS

MONUMENT BOND	\$0.00
PERFORMANCE BOND.....	\$0.00
LABOR AND MATERIAL BOND.....	\$0.00
TOTAL.....	\$0.00

LEGAL DESCRIPTION

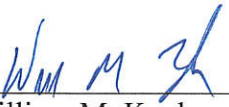
Being Lot 1 of Tract No. 2218, "Weston Ranch Unit No. 1" as filed in Book 29 of Maps and Plats at Page 99, San Joaquin County Records, lying in Sections 22 and 27, T.1N., R.6E., M.D.B.&M. and in Section C of the C.M. Weber Grant, City of Stockton, State of California, and described as follows:

Commencing at City of Stockton Traverse Control Monument No. 271, as described and shown on the Record of Survey filed in Book 35 of Surveys at Page 5, San Joaquin County Records, said monument being South 03°20'35" East, 1122.29 feet from City of Stockton Traverse Control Monument No. 272, as described and shown on said Record of Survey; thence South 88°58'30" West, 514.88 feet to the most easterly corner of said Lot 1, also being the Point of Beginning; thence along the exterior boundary of said Lot 1 the following sixteen (16) courses:

- 1) South 83°09'17" West, 117.84 feet to the beginning of a tangent curve concave southerly, having a radius of 1252.00 feet;
- 2) Along said curve, an arc length of 591.05 feet through a central angle of 27°02'54";
- 3) Tangent to said curve, South 56°06'23" West, 198.26 feet to the beginning of a tangent curve concave northwesterly, having a radius of 1148.00 feet;
- 4) Along said curve, an arc length of 433.92 feet through a central angle of 21°39'24";
- 5) Non-tangent to said curve, North 17°17'42" West, 599.18 feet;
- 6) North 69°54'19" East, 60.85 feet;
- 7) North 70°15'07" East, 206.18 feet;
- 8) North 78°04'45" East, 151.07 feet;
- 9) North 75°48'38" East, 160.58 feet;
- 10) North 83°30'03" East, 122.25 feet;
- 11) North 89°23'49" East, 200.72 feet;
- 12) South 87°47'46" East, 130.57 feet;
- 13) South 70°13'37" East, 122.58 feet;
- 14) South 58°49'08" East, 125.73 feet;
- 15) South 52°27'39" East, 112.51 feet;
- 16) South 50°13'58" East, 111.97 feet to the Point of Beginning.

Containing 12.93 acres, more or less.

This real property description has been prepared by me, or under my direction, in conformance with the requirements of the Professional Land Surveyor's Act.


 William M. Koch
 Professional Land Surveyor
 California No. 8092




 Date

Exhibit B:
Insurance Requirements for Construction Contracts

Contractor shall procure and maintain for the duration of the contract, *and for three (3) years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice** the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Surety Bonds** as described below.
5. **Professional Liability** (if Design/Build), with limits no less than **\$2,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.
6. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$2,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

If the contractor maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. At the option of the City of Stockton, either: the contractor shall cause the insurer shall reduce or eliminate such deductibles or self-insured retentions as

respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City of Stockton guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds** on the CGL and AL policy with respect to liability arising out of with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (**at least as broad as** ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read "City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers." Policy shall cover City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers for all locations work is done under this contract.
2. For any claims related to this project, the **Contractor's insurance coverage shall be endorsed as primary** insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Claims Made Policies

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work

date, the Contractor must purchase extended reporting period coverage for a minimum of three (3) years after completion of contract work.

4. A copy of the claims reporting requirements must be submitted to the City of Stockton for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII if admitted to do business in the State of California; If not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best rating of no less than A+:X.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements. If necessary, copies of the applicable insurance language, effecting coverage required by this contract may be included. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, required by these specifications, at any time, for any reason or no reason.

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

Certificate holder address

Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- 400 E Main Street, 3rd Floor – HR
- Attn: City Risk Services
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

Maintenance of Insurance

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Performance bond
2. Labor and Materials bond
3. Maintenance bond

The Performance Bond shall be in a sum equal to 100% of the contract price. The Maintenance Bond shall be equal to 10% of the contract price. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.



CITY OF STOCKTON

COMMUNITY DEVELOPMENT DEPARTMENT

City Hall • 425 N. El Dorado Street • Stockton, CA 95202-1997

937-8266

October 15, 2009

Marketplace at Weston Ranch, LLC
Attn: Jim Righeimer
4040 Macarthur Boulevard
Newport Beach, CA 92660

LBL L-SUNCAL WESTON, LLC (TM15-08)

At its regular meeting of July 23, 2009, the City Planning Commission approved your request for a Tentative Map to divide an existing parcel, totaling 12.93-acres, into seven parcels, for property located on the north side of Carolyn Weston Boulevard, approximately 150 feet east of McDougald Boulevard. This approval is subject to the following conditions:

1. Comply with all applicable Federal, State, County and City codes, regulations and adopted standards and pay all applicable State, County and City fees.
2. The owners, developers and/or successors-in-interest (ODS) shall record a Deed of Aviation Hazard Easement. This easement would grant San Joaquin County a perpetual, assignable easement permitting over flight of the property by aircraft, together with any inherent noise or other emissions which are inherent in the operation of aircraft. This easement shall be recorded as a deed restriction flowing in perpetuity to all successor property owners.
3. The ODS shall be responsible for the design and construction of signal modification and intersection improvements on Carolyn Weston Boulevard at the entrance of the subject development. Said design and construction (including dedication of necessary traffic signal maintenance easements for northbound approach of private drive) shall be reviewed and approved by the Community Development Department.
4. In order to minimize any adverse financial impact on the City of Stockton (COS) associated with development and/or use of the subject site, the owners, developers and/or successors-in-interest (ODS) agrees that it will not challenge or protest any applicable fees associated with the development of the site, but if such fees are amended or modified, the ODS agrees to pay such fees as they may be amended or modified from time to time.



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5. The ODS shall be responsible for the City's legal and administrative costs associated with defending any legal challenge of the approvals for this project or its related environmental document.
6. The San Joaquin County Flood Management Division, the Central Valley Flood Protection Board, and the State Reclamation Board shall review the master drainage plan prior to the approval of any future construction.
7. A hydrologic and hydraulic analysis shall be performed to determine if the existing storm drainage infrastructure and the existing storm water pump station are capable of accommodating the additional runoff generated by the proposed subdivision. If the existing capacity of the storm drainage infrastructure and pump station are inadequate to accept the additional runoff, the ODS shall make all necessary improvements as required by the Stockton Municipal Code. Building permits shall not be approved until storm drainage improvements are completed.
8. The ODS shall execute a maintenance agreement with the City prior to receiving a Certificate of Occupancy. The ODS shall remain the responsible party and provide funding for the operation, maintenance, and replacement costs of the proposed treatment devices built for the subject project to meet the City's Storm Water Quality Control Criteria Plan.
9. The ODS shall submit for and obtain approval for the General Plan Amendment to High Density Residential and Rezoning to RH (Residential, High Density) for an area at minimum 5.8 acres in size to replace the area of RH zoning to be rezoned into CG (Commercial, General) for the shopping center prior to the recordation of the final map. (satisfied 10-15-09)
10. The westernmost driveway on Carolyn Weston Boulevard shall be right ingress/egress only. The ODS shall be responsible for the design and construction of the device used to preclude left ingress/egress and said design shall be reviewed and approved by the Community Development Department.
11. Any improvements proposed within the 60-foot setback easement from the landside toe of levee shall be located subject to the approval of Reclamation District 17 and any other agencies having jurisdiction over the area.

In addition, the following notes and ordinance requirements are provided to assist in the submittal of a final or parcel map, as applicable, for review by the Engineering Division:

Fire Department:

1. The project shall comply with all applicable Fire Codes, including but not limited to, those referenced in a letter from the Fire Department, dated February 18, 2009 (attached).

Engineering Division:

1. The installation of any above-ground utility structures within the City's right-of-way is subject to City approval.
2. Comply with the requirements of the various agencies having jurisdiction over French Camp Slough.

Police Department (as suggestion only):

1. The ODS should provide a licensed, uniformed security guard during evening hours on workdays, (Monday through Friday) and 24 hours per day on weekends and holidays, when the developer is not on site.
2. The entire construction area should be fenced and inaccessible to the public, after hours, on weekends and holidays. The fence should be well maintained as needed during construction of the project.
3. The entire construction area should be well lighted throughout the night, every night, so as to clearly illuminate the construction site and street.
4. Portable video security monitors/cameras should be utilized during the construction phase, along with signs advertising such monitoring to further serve as a deterrent.

Municipal Utilities:

1. The project must comply with the Storm Water Quality Control Criteria Plan, per the Stockton Municipal Code Section 7-859 and as outlined in the City's Phase 1 Storm Water NPDES permit issued by the California Water Quality Control Board, Central Valley Region (Order No. R5-2002-0181).
2. The ODS shall comply with any and all requirements, and pay all associated fees, as required by the City's Storm Water Pollution Prevention Program, as set forth in its NODES Storm Water Permit.
3. A signed Notice of Intent (NOI) or Waste Discharger Identification Number (WDID) shall be submitted to the City of Stockton prior to any construction activities.
4. The City of Stockton requires an Erosion Control Plan to be submitted with improvement plans.

The attached letter (dated February 19, 2009) from the San Joaquin Valley Air Pollution Control District regarding district regulations is forwarded for the Applicant's information.

LBL L-Suncal Weston, LLC
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Note: The Tentative Map (TM15-08) was approved by the Planning Commission on July 23, 2009 and became effective on the effective date (October 15, 2009) of the related rezoning applications (Z06-08, P09-029).

Enclosed is a copy of the approved Tentative Map which will expire on October 15, 2011. Any request for an extension shall be made in writing, filed with this office and accompanied by the appropriate fees prior to expiration of the tentative map and clearly stating the reasons for requesting the extension. In granting an extension, new conditions may be imposed and existing conditions may be revised. If you have any questions, you may contact Senior Planner Adam Brucker at 937-7564.



MICHAEL M. NIBLOCK, DIRECTOR
COMMUNITY DEVELOPMENT DEPARTMENT

MMN:ACB:fw

Enclosure

cc: LBL L-Suncal Weston, LLC
Attn: Bruce Elieff
2392 Morse Avenue
Irvine, CA 92614-6234

LBL L-Suncal Weston, LLC
5109 East La Palma, Suite D
Anaheim, CA 92807

Mike Persak, Senior Project Manager
Stantec Consulting, Inc.
1217 J Street
Modesto, CA 95354

Johnny Chang, City Engineer, CDD/Engineering w/sepia
Building Division

NOTICE: To protest the imposition of any development fee, dedication, reservation or other exaction imposed on your project, you must file written notice with the City Clerks' office within 90 days after approval of the project or imposition of the fees, dedications, reservations or other exactions stating that the required payment is tendered or will be tendered when due, or that any conditions which have been imposed are provided for or satisfied, under protest, along with a statement of the factual elements of the dispute and the legal theory forming the basis for the protest.

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