

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 SUBDIVISION AGREEMENT ("Agreement") is made and entered into as of _____ by and between the CITY OF STOCKTON, hereafter referred to as "CITY," and RUSSELL BOWERS, TRUSTEE OF THE RUSSELL BOWERS TRUST, hereinafter referred to as "SUBDIVIDER."

WITNESSETH:

WHEREAS, Subdivider has presented to City for approval a final subdivision map (hereinafter called "MAP") entitled **BD HOMES -- TRACT NO. 4034 (TM P18-0688)** 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 (5366C) dated 1/10/2020, prepared by Conti & Associates, Inc., and consisting of Sheets 1 through 11 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 (2 Monuments)..... \$4,000.00
- 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 \$405,105.25
- 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..... \$405,105.25

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 \$8,102.00 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>	=	\$15,071.62
<u>Inspection Fee</u>	=	\$14,779.22

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 \$187.00 (\$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 \$98.00 and \$155.00, 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, ROOM 301
STOCKTON CA 95202

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

RUSSELL BOWERS, TRUSTEE OF THE RUSSELL BOWERS TRUST
23 HOOPER DRIVE
STOCKTON CA 95203

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

SURETEC INSURANCE COMPANY
9737 GREAT HILL TRAIL, SUITE 320
AUSTIN TX 78759

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: 17 trees @ \$195 ea. X 125% = \$4,143.75

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: 1 signs @ \$286.25 ea. = \$286.25

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 this Agreement to a controlled subsidiary of Subdivider or a purchaser of all or substantially all of Subdivider's interest in the real property which is the subject of the Map, provided the assigning party causes the assignee to assume in writing all obligations of the assignor under this Agreement. Notice of an assignment to a controlled subsidiary of Subdivider or a purchaser of all or substantially all of Subdivider's interest shall be given to the City in writing within 30 days of such change. Upon any such assignments, 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 TM P18-0688 as shown in Exhibit C (attached) shall apply to this subdivision agreement.

ATTEST:

ELIZA R. GARZA, CMC
CITY CLERK

CITY OF STOCKTON:

HARRY BLACK
CITY MANAGER

By _____

By _____

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

RUSSELL BOWERS
Russell Bowers
(PRINT NAME)

BY _____
CITY ATTORNEY

BY [Signature]
(SIGNATURE)
TRUSTEE OF THE RUSSELL
(TITLE)
BOWERS TRUST

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.

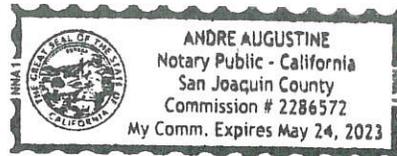
State of California
County of San Joaquin

On April 27, 2020 before me, Andre Augustine, Notary Public
(insert name and title of the officer)

personally appeared Russell Bowers
who proved to me on the basis of satisfactory evidence to be the person whose name is/ ~~is~~
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 on the instrument the
person , or the entity upon behalf of which the person 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 *Andre Augustine* (Seal)

(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)

Legal Description
For
BD Homes Subdivision

The land referred to herein below is situated in the City of Stockton, County of San Joaquin, State of California and is described as follows:

A parcel of real property situated in the County of San Joaquin, State of California, in the Northwest Quarter and in the Southwest Quarter of Section Eight (8), Township Two (2) North, Range Six (6) East, Mount Diablo Base and Meridian, and more particularly described as follows:

Beginning at an iron pipe at the center of said Section 8 and in the North line of Wagner Heights Road, as shown on Survey filed in Book 7 of Surveys, at Page 101, San Joaquin County Records; thence along Quarter Section along the West line of above mentioned Survey, North 0° 46' 30" West 473.54 feet to an iron pipe; thence South 67° 11' West 294.93 feet to an iron pipe at the most Northerly corner of the 28.785 acre Tract described in decree for final distribution, recorded in Book 1522 at page 227, Official Records of San Joaquin County; thence along the Easterly line of said 28.785 acre Tract, South 15° 48' 20" East 442.23 feet to an iron pipe in the Northerly line of said Wagner Heights Road, as said Road is described in Book 199 at Page 333, Official Records of San Joaquin County, and as said Road is shown on Map of Survey filed in Book 7 of Surveys, at Page 304, San Joaquin County Records; thence along the Northerly line of Wagner Heights Road, North 67° 11' East 171.20 feet to the iron pipe at the point of beginning.

END DESCRIPTION



Signed
March 5th, 2020

EXHIBIT A

SUMMARY OF FEES AND BONDS

STREET NAME SIGN FEE	\$286.25
PLAN CHECK FEE(PREPAID \$15,071.62).....	\$0.00
INSPECTION FEE.....(PREPAID \$14,779.22).....	\$0.00
MATERIAL TESTING FEE.....	\$0.00
FILING FEE.....(PREPAID \$3,526.00).....	\$0.00
TECH FEE.....(PREPAID \$2,517.29).....	\$0.00
CRS FEE.....(PREPAID \$2,013.83).....	\$0.00
CASH DEPOSIT	\$8,102.00
COMPUTER MAPPING FEE.....(PREPAID \$187.00)	\$0.00
MUD IMAGING FEE.....	\$0.00
ASSESSMENT DISTRICT SEGREGATION.....	\$0.00
TOTAL	\$8,388.25

RECORDING FEE (payable to San Joaquin County Recorder)

MAP (2 Sheets)	\$98.00
AGREEMENT (23 Sheets)	\$155.00
TOTAL	\$253.00

BONDS

MONUMENT BOND	\$4,000.00
PERFORMANCE BOND	\$405,105.25
LABOR AND MATERIAL BOND	\$405,105.25
STREET TREE BOND.....	\$4,143.75
TOTAL	\$818,354.25
STREET MICROSURFACING (686-0000-237.67-40)	\$4,197.00

EXHIBIT B:
Insurance Requirements
(Right of Entry)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

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 **\$1,000,000** 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 Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. (for lessees with employees).
4. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

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

Other Insurance Provisions:

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

Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance (**at least as broad as** ISO Form CG 20 10 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 officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

For any claims related to this contract, the Lessee's insurance coverage shall be endorsed as primary insurance as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, and volunteers, and volunteers shall be excess of the Lessee's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Lessee's insurance coverage to sole negligence.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Waiver of Subrogation

Lessee hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Lessee may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Lessee to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's 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's rating of no less than A+:X.

Verification of Coverage

Lessee shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. 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 Lessee's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time, for any reason or no reason.

Lessee 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.

Special Risks or Circumstances

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

Certificate holder address

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

- City of Stockton
- Attention: Risk Services
- 425 N. El Dorado Street
- 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 Lessee fails to maintain the required insurance in full force and effect, the CITY may terminate this Contract.

Resolution No. **2019-03-14-0502**

STOCKTON PLANNING COMMISSION

RESOLUTION APPROVING TENTATIVE MAP TO CREATE A THIRTEEN-LOT SUBDIVISION AND HERITAGE TREE PERMIT TO REMOVE THREE OAK TREES FOR THE DEVELOPMENT OF A SINGLE-FAMILY RESIDENTIAL PROJECT LOCATED AT 2233 WAGNER HEIGHTS ROAD (P18-0688)

The applicant, DB Homes, on behalf of Russell Bowers, the property owner, is proposing to develop 2.16 acres of land at the above-noted location; and

To develop single-family residences on the site, the project requires the following applications:

- Tentative Map to subdivide a 2.16-acre site into thirteen (13) lots (Exhibit 1); and
- Heritage Tree Permit for the removal of three heritage oak trees within the subdivision area.

The subject site is designated Low-Density Residential on the 2040 General Plan designation and is zoned RL (Residential, Low-Density). The residential development will provide a density of 8.3 units per net acres; and

Because the subdivision design is integral to the tree removal, the Director has elevated the Heritage Tree Permit to the Planning Commission for action, as provided by SMC Section 16.88.050(B)(5); and

On March 1, 2019, public notice for the subject application was published in the local newspaper in accordance with SMC Section 16.88.030; and

On March 14, 2019, the Planning Commission conducted a public hearing on the application, in compliance with SMC Section 16.116.040(D), at which point all persons wishing to be heard were provided such opportunity; now, therefore,

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF STOCKTON AS FOLLOWS:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Based upon its review of the entire record herein the Planning Commission makes the following findings:

Tentative Map

1. The proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan (Subdivision Map Act Section 66473.5), and any applicable Specific Plan, Precise Road Plan, or Master Development Plan. The proposed residential use would be consistent with the Low Density Residential 2040 General Plan designation.
2. The findings in SMC Section 16.188.060 (B) can be made in the affirmative as follows:
 - (1) Approval of the subdivision map is consistent with 2040 General Plan designation for Low-Density Residential land use;
 - (2) The site is suitable for the type or proposed density of development with 8.3 units per net acre in the RL zone. A maximum of density requirement in the RL zone is 8.7 units per net acre;
 - (3) The design of the subdivision is not likely to cause substantial environmental damage or injure fish or wildlife or their habitat because the applicant is subject to the San Joaquin County Multi-Species Open Space and Habitat Conservation Plan (SJMSCP) and has agreed to participate in the plan;
 - (4) The design of the subdivision is not likely to cause serious public health or safety problems because all on-site and off-site improvements will comply with the City's development standards;
 - (5) The design of the subdivision would not conflict with easements acquired by the public at large for access through, or use of, property within the proposed subdivision because no such easement exists within the subdivision boundary and those which are new and necessary will be acquired through Conditions of Approval of on the map.
 - (6) The discharge of sewage from the proposed subdivision into the regional sewer system would not result in violation of existing requirements prescribed by the California Regional Water Quality Control Board because the subdivision would discharge into the City's sanitary system which operates in compliance with said requirements;
 - (7) There are no adverse soil or geological conditions affecting the subdivision. The site and its immediate vicinity are comparatively flat and devoid of steep slopes. Neither the California Geologic Survey nor the United States Geological Survey have identified any hazards or earthquake fault zones for the property. Project construction will involve minimal site grading. All required soil reports will be submitted to Building and Life Safety Division with residential building permit;

- (8) The proposed subdivision on the site is consistent with all applicable of the Development Code, Municipal Code, the City's standard specifications and plans and the Map Act.

SMC Chapter 16.90 (Floodplain Management Findings)

3. As indicated in the preceding finding, the proposed subdivision is categorically exempt from CEQA and, therefore, would not result in a significant impact, as defined at Water Code section 85057.5(a)(4). Given this fact, the proposed subdivision is not considered a covered action within the meaning of California Water Code section 85057.5.
4. Compliance with SMC Chapter 16.90 is demonstrated by the proposed subdivision's location in an area of potential flooding of three feet or less from a storm event that has a 1-in-200 chance of occurring in any given year, from sources other than local drainage, as depicted on San Joaquin County 200-year floodplain map and data. Therefore, the subdivision falls within the shallow floodplain exemption provided at SMC §16.90.020(A)(6).

Stockton Municipal Code section 16.188.060(A)(2) (Supplemental Findings)

5. "Construction of Improvements. It is in the interest of public health and safety, and it is necessary as a prerequisite to the orderly development of the surrounding area, to require the construction of improvements within a specified time after recordation of a parcel map of four (4) or fewer parcels where improvements are required." (SMC § 16.188.060(A)(2)(a).)

The proposed subdivision will include dedication and construction of a new public street segment with sidewalk, curb, gutter, landscaping, and street lighting. All improvements will comply with the City's Standard Plans and Specifications.

6. "Condominiums. Any applicable findings required by Section 16.196.030 for condominium conversions." (SMC § 16.188.060(A)(2)(b).)

Findings under SMC section 16.196.030 are not applicable since no conversion would occur.

7. "Dedications or Exactions. Any applicable findings required by Section 16.72.060(A) (Findings required for dedications and exactions), if dedications or exactions are required." (SMC § 16.188.060(A)(2)(c).)

The proposed subdivision map, a 10-foot public utility easement along the frontage of each lot will be dedicated.

8. "Waiver of Parcel Map. The findings required by Section 16.192.020(A)(1) (Waiver of parcel map), if waiver of a Parcel Map has been requested with the tentative

map application.” (SMC § 16.188.060(A)(2)(d))

A waiver of the tentative parcel map has not been requested.

California Environmental Quality Act

9. The proposed subdivision is Categorical Exempt from the California Environmental Quality Act (CEQA) under the CEQA Guidelines Section 15332, Class 32 (Infill Development Projects) based on the following evidence:
 - (1) As documented by the staff report accompanying this resolution and findings herein, the subdivision is consistent with the 2040 Stockton General Plan and SMC Title 16 (Development Code).
 - (2) The site is located in an urbanized area within city limits and is less than 5 acres in size.
 - (3) The site has no value as habitat for endangered, rare or threatened species and, regardless, the applicant has opted to participate in the San Joaquin Multi Species Habitat Conservation Plan to ensure no significant effects relating to biological resources result from the subdivision. Furthermore, on March 5, 2019, a qualified biologist surveyed trees proposed for removal and identified no nests but potentially suitable habitat for Swainson's Hawks. Participation in the SJMSHCP ensures, should such nests be established, that no significant environmental effects will result on this topic.
 - (4) The project would not result in any significant effect relating to traffic, noise, air quality, or water quality. The subdivision size falls below the threshold requiring preparation of a traffic study. The proposed use is consistent with existing adjacent land uses (i.e., residential, school) and, as a result, would not general significant noise levels. The subdivision size is considered by the San Joaquin Valley Air Pollution Control District to be 'Small' and below a screening level of 390 units and, therefore, to not result in a significant air quality impact. The subdivision is subject to the mandatory standards of the City of Stockton National Pollutant Discharge Elimination System Stormwater Permit and, therefore, would not result in a significant effect relative to stormwater.
10. The proposed subdivision is not subject to any of the exceptions to the use of a Categorical Exemption provided at CEQA Guidelines Section 15300.2. The potential cumulative effects of the subdivision are addressed in the 2040 Stockton General Plan Environmental Impact Report certified by City Council on December 4, 2018 via Resolution No. 2018-12-04-1503-01. The subdivision is not visible from a scenic highway, is not a hazardous waste site, and excludes historical resources. Lastly, as documented above, the subdivision would not result in a significant effect.

Removal of Heritage Oak Trees

1. "The condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structures, and interference with utility services." (SMC § 16.130.030 (C) (1).)

Removal of three heritage oaks because of disease, danger of falling, closed to existing structure and interference with utility services are not applicable for the project.

2. "The necessity to remove the tree in order to construct any proposed improvements, and the possibility of revising proposed tentative maps and improvement plans in order to save the trees." (SMC § 16.130.030 (C) (1).)

Three heritage oak trees along the south boundary of the site are located on the street right-of-way. Removing three heritage oak trees will allow for construction of the project's site frontage to serve the subject site. Modifying the map to accommodate these trees, could result in their roots causing damage to street sidewalk and underground utility lines when they are provided. Further, Valley Oak trees are not an approved street tree species because they get too large and are prone to summer limb drop on the street.

3. "The topography of the land and the effect of the removal of the tree on erosion, soil retention and diversion or increased flow of surface waters." (SMC § 16.130.030 (C) (1).)

Removal of the tree on erosion soil retention and diversion or increased flow of surface waters is not applicable for the project.

4. "The number of similar trees existing in the vicinity." (SMC § 16.130.030 (C) (1).)

There are no similar existing oak trees in the vicinity. Pursuant to SMC Section 16.130.060, any heritage tree that is removed shall be replaced on a three (3) for one (1) basis with at least 15-gallon container stock. Nine (9) 15-gallon oak trees will be planted in the subdivision area.

Conditions of Approval*Standard Conditions of Approval*

1. Comply with all applicable Federal, State, County and City codes, regulations and adopted standards and pay all applicable fees.
2. The property owners, developers and/or successors-in-interest (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.

3. 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 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.
4. The Tentative Map becomes effective for 24 months after a 10-day appeal period. Pursuant to SMC Section 16.188.100 (C), an extension request shall be in writing and shall be filed with the Department on or before the date of expiration of the approval or previous extension, together with the required filing fee.

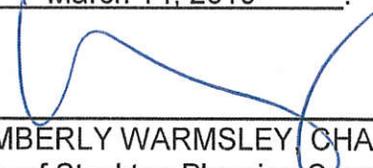
Specific Conditions of Approval

5. The ODS shall comply with SMC Section 16.130.060. Heritage trees removed shall be replaced on a three (3) for one (1) basis with at least 15-gallon container stock. As the subdivision results in three (3) heritage trees being removed, nine (9) 15-gallon oak trees shall be planted in the subdivision area. Four oak trees shall be planted on the front yards of larger lots around the north side of the cul-de-sac. Two trees shall be placed on the side yards of Lots 1 and 13. The requirements of this condition shall be noted on the Final Map.
6. Prior to grading permit issuance, the subject development must comply with the requirements of the San Joaquin Council of Governments, Multi-Species Habitat Conservation and Open Space Plan, through issuance of an Incidental Take Permit or compliance with Incidental Take Mitigation Measures.
7. Prior to building permit application, the single-family homes in the subdivision shall receive Design Review approval in accordance with SMC Chapter 16.120.
8. Compliance with SMC Section 16.220.105 (B), the structure is exempt from any historic consideration because it is less than 50 years of age. A building permit to demolish the structure shall be required prior to submittal of the grading permit, pursuant to the provisions of SMC Section 15.04.250 through 15.04.270.
9. The ODS shall dedicate right-of-way along Wagner Heights Road to a half section of 36'.
10. The ODS shall be responsible for the design and construction of the off-site improvements along the site frontage prior to any final inspection approval of any building permit issued for site development.
11. Upon approval of the Tentative Map, the ODS shall annex into and comply with all requires of the Citywide Services and Maintenance Community Facility District

(CFD), in accordance with the City Council adopted resolution 2018-07-17-1301.

12. The ODS shall be responsible for the installation of a 6-foot high wood fence around the perimeter of the site before the issuance of Certificate of Occupancy for the first home. The wood fence shall be subject to approval by the Community Development Director prior to the installation.

PASSED, APPROVED, and ADOPTED March 14, 2019.


KIMBERLY WARMSLEY, CHAIR
City of Stockton Planning Commission

ATTEST:


MICHAEL MCDOWELL, SECRETARY
City of Stockton Planning Commission