DISPOSITION AND DEVELOPMENT AGREEMENT
(South Pointe Project)

This DISPOSITION AND DEVELOPMENT AGREEMENT ("**Agreement**") is dated as of February ____, 2024 (the "**Effective Date**"), by and between the CITY OF STOCKTON, a chartered municipal corporation (the "**City**") and RBH STOCKTON OZ PROJECT, LLC, a Delaware limited liability company ("**Developer**"). The City and Developer may be referred to individually as a "**Party**" or together as the "**Parties**."

RECITALS

A. Capitalized terms used but not defined in these Recitals shall have the meaning set forth in Section 1.0 below.

B. The City is the owner of approximately 9.12 acres of real property bounded by West Weber Avenue, Mormon Slough, the Stockton Downtown Marina, and the Stockton Channel located at 701-855 W. Weber Avenue and generally identified as San Joaquin Assessor Parcel Numbers 145-270-06 and 145-270-10, the unimproved portion of San Joaquin Assessor Parcel Number 145-190-03 and 145-270-09, and an unnumbered parcel consisting of right of way to be vacated by the City ("**Right of Way**"), all as depicted in Exhibit A (the "**Disposition Property**"). The City also owns and will retain fee ownership of a portion of the property identified as San Joaquin Assessor Parcel Number 145-190-03 that is improved with a park, as depicted in Exhibit B ("**Park Property**") and the portion of the property identified as San Joaquin Assessor Parcel Number 145-270-09 improved with restrooms and part of a parking lot, as depicted in Exhibit C in red outline ("**City Facilities Property**") and a paved walkway along the perimeter of the Disposition Property (the "**Promenade**"). Collectively, the Disposition Property, the Park Property, the City Facilities Property, and the Promenade may be referred to as the "**Site**." The Parties agree to cause a written legal description of the Disposition Property to be prepared, which upon written approval of the Parties shall be appended to this Agreement and incorporated into Exhibit A.

C. On June 25, 2020, City issued a Request for Interest and Qualifications for development of the Site, to which the Developer responded. On December 16, 2020, City and Developer entered into an Exclusive Negotiating Rights Agreement ("**ENRA**") to negotiate a purchase agreement in the form of a Disposition and Development Agreement to facilitate the development of the Site as described herein. Negotiations were paused so that City could comply with new notice requirements under the Surplus Land Act.

D. On May 11, 2021, by Resolution 2021-05-11-1204 the City Council declared the Disposition Property to be surplus and thereafter, in compliance with the Surplus Land Act (Government Code section 54220 *et seq*.), the City issued a notice of availability pursuant to Section 54222 of the Surplus Lands Act. The City received no notices of interest from any local affordable housing sponsors or other preferred purchasers in response to its initial 60-day notice.

E. The purpose of this Agreement is to advance City's purposes and goals in facilitating the construction of a mixed-use development on the Disposition Property known as "The Village at South Pointe," or such other name as may be mutually agreed upon by the

Parties (the "**Project**") and to memorialize the obligation that not less than 15 percent of the total number of residential units developed on the Disposition Property shall be sold or rented at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or affordable rent, as defined in Section 50053 of the Health and Safety Code, to lower income households, as defined in Section 50079.5 of the Health and Safety Code as provided under Section 54233 of the Surplus Land Act.

F. The Disposition Property is currently unimproved. The Park Property is developed with a landscaped area with seating, lighting fixtures and decorative sculptures. The City Facilities Property is developed with a sidewalk, drive aisle, parking spaces, and restrooms, and the Promenade is developed with a paved walkway along the Disposition Property's perimeter.

G. The Project will consist of mixed-income residential housing, retail space, community/civic space, and parking developed in two phases on the Disposition Property that, upon completion, shall include no fewer than 300 units (including independent living senior housing), 4,000 square feet of educational space, 16,000 sf of retail and/or community serving facility space within Phase 1 (as defined below), and 220 units of housing, including market rate and affordable housing, within Phase 2 (as defined below).

H. On December 4, 2018, the City adopted the Envision Stockton 2040 General Plan Update ("**General Plan**") and certified an Environmental Impact Report for the General Plan ("**General Plan EIR**"). The General Plan includes the Site within the Commercial Downtown (CD) land use designation, permitting commercial office, high density residential development, tourist and lodging oriented uses, and governmental facilities. The Site's zoning is consistent with the General Plan designation. The Project is consistent with the land uses, density, and development intensities allowed under the General Plan and the zoning applicable to the Site.

I. On May 4, 2020, the City performed a Phase I Assessment of the Site which revealed the presence of certain contaminants on the Site as more particularly described therein ("**Phase I Assessment**"). In December 2021, the City performed a Phase II Assessment of the Site ("**Phase II Assessment**"). The City and its consultant, Stantec, are working with the California Department of Toxic Substances Control ("**DTSC**") to remediate the Disposition Property and the Park Property. DTSC has awarded an approximately $5.2 million grant to City ("**DTSC Grant**") that City will use to remediate the Site prior to any disposition or development of the Project. Site remediation will occur pursuant to remediation document approved by DTSC, which may be a Removal Action Work Plan or a Remedial Action Plan ("**Remediation Document**").

J. To comply with the California Environmental Quality Act ("**CEQA**"), the City will prepare an Initial Study to asses the environmental effects of implementing the Remediation Document and developing the Project as compared with the environmental effects already analyzed in the General Plan EIR, with which the Project is consistent. The City reserves full discretion to take all steps necessary to comply with CEQA prior to the City's action on entitlements for the Project, DTSC's action on the Remediation Document, or transfer of the Disposition Property.

K. The Parties wish to enter into this Agreement to set forth the terms and conditions relating to City's disposition of the Disposition Property to Developer following completion of the remediation of the Site.

NOW, THEREFORE, in reliance on the Recitals above, which are incorporated by reference herein with the same force and effect as any other term and condition of this Agreement, and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

AGREEMENT

1. DEFINITIONS

"**Additional Remediation Funding**" is defined in Section 3.2.

"**Affiliate**" means an entity or person that is directly or indirectly Controlling, Controlled by, or under common Control with Developer. For the purposes of this definition, "Control" shall have the meaning set forth in Section 11.1.2 below.

"**Affordable Housing Declaration**" is defined in Section 6.6.1.

"**Agreement**" is defined in the preamble.

"**Applicable Laws**" shall mean all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure) of the United States, the State of California, the County of San Joaquin, the City, and any other political subdivision in which the Disposition Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer, the Property or the Project, including all Environmental Laws and applicable provisions of CEQA and the National Environmental Policy Act.

"**As-Is Condition**" is defined in Section 5.2.

"**CEQA**" is defined in Recital I.

"**CEQA Review**" is defined in Section 4.5.

"**Certificate of Completion**" means the City certificate substantially in the form of Exhibit H.

"**City**" is defined in the preamble.

"**City Closing Condition Precedent**" shall mean any of the City Phase 1 Closing Conditions Precedent or the City Phase 2 Closing Conditions Precedent.

"**City Contribution**" is defined in Section 3.2.1.

"**City Contribution Notice**" is defined in Section 3.2.1.

"**City Facilities Property**" is defined in Recital B.

"**City Funding Election Notice**" is defined in Section 3.2.1.

"**City Funding Termination Notice**" is defined in Section 3.2.1.

"**City Party**" and "**City Parties**" is defined in Section 5.2.

"**City Phase 1 Closing Conditions Precedent**" is defined in Section 6.7.1.

"**City Phase 2 Closing Conditions Precedent**" is defined in Section 6.7.2.

"**City Shortfall Notice**" is defined in Section 3.2.1.

"**City Source Funding**" shall mean the DTSC Grant, the Additional Remediation Funding, and the City Contribution, if any.

"**City's Title Covenant**" is defined in Section 6.6.

"**City's Title Response**" is defined in Section 6.4.3.

"**City's Title Response Period**" is defined in Section 6.4.3.

"**Claims**" means any and all liabilities, obligations, orders, claims, damages, governmental fines or penalties, awards of attorneys' fees to third parties, and expenses of defense with respect to any of the foregoing, including reasonable attorneys' fees and costs.

"**Closing**" shall mean the recordation of a Grant Deed in the Official Records.

"**Commence Construction**", "**Commencement of Construction**" and similar capitalized variations thereof shall mean (i) for a building or structure, commencement of construction to erect the building or structure under a City-issued building permit, including foundation work, demolition, grading activities, and /or construction contractor mobilization on the Disposition Property following issuance of a building permit for a Project building (excluding surveying, inspecting, securing, or staking the Site); and (ii) for Infrastructure, commencement of demolition, grading, excavation or other construction activities take pursuant to a City-issue permit for the Infrastructure.

"**Complete Construction**", "**Completion of Construction**" and any capitalized variations thereof means: (i) for Infrastructure, the City and any other governmental agencies with jurisdiction over any required permits for the Infrastructure have issued required approval(s), with construction fully completed, and final inspection(s) completed; and (ii) for any building, the City has issued a final Certificate of Occupancy.

"**Control**" is defined in Section 11.1.1.

"**Default**" is defined in Section 9.1.

"**Deposit**" is defined in Section 6.2.

"**Developer**" is defined in the preamble.

"**Developer Closing Condition Precedent**" shall mean any of the Developer Phase 1 Closing Conditions Precedent or the Developer Phase 2 Closing Conditions Precedent.

"**Developer Contribution**" is defined in Section 3.2.2.

"**Developer Funding Election Notice**" is defined in Section 3.2.2.

"**Developer Funding Termination Notice**" is defined in Section 3.2.2.

"**Developer Parties**" is defined in Section 5.6.

"**Developer Phase 1 Closing Conditions Precedent**" is defined in Section 6.8.1.

"**Developer Phase 2 Closing Conditions Precedent**" is defined in Section 6.8.2.

"**Disposition Property**" is defined in Recital B.

"**DTSC**" is defined in Recital I.

"**DTSC Grant**" is defined in Recital I.

"**Effective Date**" is defined in the preamble.

"**Environmental Laws**" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; the Solid Waste Disposal Act, 42 U.S.C. §6901 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Hazardous Waste Control Law, California Health and Safety Code §25100 et seq.; and the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.

"**ENRA**" is defined in Recital C.

"**ENRA Deposit**" is the nonrefundable deposit of Ten Thousand Dollars ($10,000) provided from Developer to the City pursuant to the ENRA.

"**ENRA Deposit Balance**" is the remaining balance of the ENRA Deposit after deducting eligible costs pursuant to the ENRA.

"**Escrow**" shall mean the escrow account opened with Escrow Agent under this Agreement.

"**Escrow Agent**" shall mean Old Republic Title Company, located at 3425 Brookside Road, Suite C, Stockton, CA 95219.

"**Feasibility Period**" is defined in Section 5.5.

"**Force Majeure**" is defined in Section 10.

"**General Plan EIR**" is defined in Recital C.

"**Grant Deed**" means the grant deed for a Phase Conveyance from City to Developer to be executed and recorded at each Closing substantially in the form attached hereto as Exhibit D and incorporated herein by this reference.

"**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States of America, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum, petroleum products, components and by-products; (vi) asbestos and asbestos-containing materials; (vii) polychlorinated biphenyls; (viii) per- and polyfluoroalkyl substances ("PFAS"); (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317); (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (42 U.S.C. § 6903); or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., as the foregoing statutes and regulations now exist or may hereafter be amended.

"**Infrastructure**" shall mean streets, rails, sewer and storm drainage systems, water systems, street improvements, traffic signal systems, dry utilities and other improvements required in connection with the Project Approvals, any of which are to be constructed in or for the benefit of the Disposition Property, and shall not include buildings and structures.

"**Minimum Program**" is defined in Section 4.3.

"**Mortgagee**" shall mean the holder of a mortgage, deed of trust or other security instrument permitted by this Agreement.

"**Notice**" is defined in Section 12.1.

"**Notice of Feasibility Approval**" is defined in Section 5.7.

"**Opening of Escrow**" is defined in Section 6.1.

"**Permitted Exceptions**" is defined in Section 6.4.2.

"**Permitted Transfer**" is defined in Section 11.1.2.

"**Phase Conveyance**" is defined in Section 4.1.

"**Phase Improvements**" shall mean any building or structure constructed as part of the Project.

"**Phase I Assessment**" is defined in Recital I.

"**Phase II Assessment**" is defined in Recital I.

"**Phase 1**" shall mean the first phase of development of the Project, to be constructed on the Phase 1 Property.

"**Phase 1 Closing**" is defined in Section 6.9.

"**Phase 1 Closing Date**" is defined in Section 6.9.

"**Phase 1 Consideration**" is defined in Section 6.7.1(k)

"**Phase 1 Construction Contract**" is defined in Section 6.7.1(j).

"**Phase 1 Conveyance**" shall mean the first Phase Conveyance.

"**Phase 1 Improvements**" shall mean all Phase Improvements on Phase 1.

"**Phase 1 Milestones**" shall mean the following: (i) evidence that Developer has secured financing for Phase 1; (ii) Developer's Commencement of Construction, inclusive of Infrastructure; (iii) Completion of piles and foundations for Phase 1 Improvements; (iv) Completion of superstructure for Phase 1 Improvements; (v) Substantial completion of the exterior skin for the Phase 1 Improvements; (vi) Substantial Completion of Phase 1; and (vii) Completion of Construction of all Phase 1 Improvements.

"**Phase 1 Outside Closing Date**" is defined in Section 6.9.

"**Phase 1 Property**" shall mean the portion of the Disposition Property described in the Grant Deed effectuating the Phase 1 Conveyance.

"**Phase 1 Title Policy**" is defined in Section 6.11.

"**Phase 2**" shall mean the second phase of development of the Project, to be constructed on the Phase 2 Property.

"**Phase 2 Closing**" is defined in Section 6.10.

"**Phase 2 Closing Date**" is defined in Section 6.10.

"**Phase 2 Consideration**" is defined Section 6.7.2(g).

"**Phase 2 Construction Contract**" is defined in Section 6.7.2(h).

"**Phase 2 Conveyance**" shall mean the second Phase Conveyance.

"**Phase 2 Improvements**" shall mean all Phase Improvements on the Phase 2 Property.

"**Phase 2 Milestones**" shall mean the following: (i) the occurrence of the Phase 2 Closing prior to the Phase 2 Outside Closing Date; (ii) Developer provides initial financial model to City; (iii) Developer's Commencement of Construction for Phase 2 Improvements; (iv) Completion of piles and foundations for Phase 2 Improvements; (v) Completion of superstructure for Phase 2 Improvements; (vi) Substantial completion of the exterior skin for the Phase 2 Improvements; (vii) Substantial Completion of Phase 2; and (viii) Completion of Construction of all Phase 2 Improvements.

"**Phase 2 Outside Closing Date**" is defined in Section 6.10.

"**Phase 2 Property**" shall mean the portion of the Disposition Property described in the Grant Deed effectuating the Phase 2 Conveyance.

"**Phase 2 Title Policy**" is defined in Section 6.11.

"**Preliminary Site Title Report**" is defined in Section 6.4.1.

"**Prevailing Wage Laws**" is defined as California Labor Code sections 1720-1720.6 and the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.).

"**Priority Infrastructure**" shall mean the following items of Infrastructure: (i) installation of fire hydrants, connection and activation of fire water systems, and Completion of Construction of emergency access routes; (ii) connection and activation of gas and electric services, (ii) connection and activation of storm and sanitary systems; (iii) connection and activation of domestic water systems, (iv) connection and activation of telecommunications systems, (v) Completion of Construction of primary sidewalks, including perimeter sidewalks surrounding the Disposition Property, and primary streets and roads, inclusive of code compliant lighting, and traffic control devices.

"**Project**" is defined in Recital E.

"**Project Approvals**" is defined in Section 4.4.

"**Purchase Price**" is defined in Section 4.2.

"**Purchase Price Balance**" means the Purchase Price reduced by the Deposit and the ENRA Deposit.

"**Reference Date**" is defined in Section 6.5.

"**Remediation Cost**" is defined in Section 3.2.

"**Remediation Work**" is defined in Section 3.1.

"**Right of Reverter**" is defined in Section 9.3.1.

"**Schedule of Performance**" shall mean Exhibit I to this Agreement.

"**Site**" is defined in Recital B.

"**Substantial Completion**" or "**Substantially Complete**" for Phase 1 shall mean Completion of Construction of all Priority Infrastructure, and receipt of a temporary certificate of occupancy for the Minimum Program for Phase 1; and for Phase 2 shall mean Completion of Construction of all remaining Infrastructure and receipt of a temporary certificate of occupancy for the Minimum Program for Phase 2.

"**Title Objections**" is defined in Section 6.4.2.

"**Title Review Period**" is defined in Section 6.4.2.

"**Title Update**" is defined in Section 6.5.

"**Transfer**" is defined in Section 11.1.1.

2. REPRESENTATIONS AND WARRANTIES

2.1 City Representations. As of the Effective Date, City represents and warrants to Developer as follows:

2.1.1 Authority. City is a California municipal corporation with full right, power and lawful authority to perform its obligations hereunder, and the execution, delivery, and performance of this Agreement by City has been fully authorized by all requisite actions on the part of the City Council.

2.1.2 No Conflict. To City's current actual knowledge, City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which City is bound.

2.1.3 No Litigation or Other Proceeding. To City's current actual knowledge, other than seeking DTSC's administrative approval of the Remediation Document, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform its obligations under this Agreement.

2.1.4 Right to Possession. No person or entity other than City has the right to use, occupy, or possess the Disposition Property or any portion thereof. City shall not enter into

any lease or other agreement respecting the use, occupancy, or possession of the Disposition Property or any portion thereof that would continue beyond the Phase 1 Closing without the prior written consent of Developer.

As used in this 2.1, "current, actual knowledge" means the current actual knowledge of Harry Black, City Manager, as of the Effective Date. Until such time as the Closing occurs, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, promptly give Notice of such fact or condition to Developer. The foregoing representations and warranties shall survive each Closing for a period of twelve (12) months.

2.2 Developer's Representations.

2.2.1 Authority. Developer is duly organized within the State of Delaware and will be qualified to do business in California and in good standing under the laws of the State of California as of the Closing. The Organizational Documents provided by Developer to City are true and complete copies of the originals, as may be amended from time to time. Developer has full right, power and lawful authority to undertake all of its obligations hereunder and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite board actions on the part of Developer.

2.2.2 No Conflict. Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which Developer is bound.

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

2.2.4 No Litigation or Other Proceeding. To Developer's current actual knowledge, no litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened, in writing, which would prevent, hinder or delay the ability of Developer to perform its obligations under this Agreement.

2.2.5 No Developer Bankruptcy. Developer is not the subject of any bankruptcy proceeding, and no general assignment or general arrangement for the benefit of creditors or the appointment of a trustee or receiver to take possession of all or substantially all of Developer's assets has been made.

As used in this Section 2.2, "current, actual knowledge" means the current actual knowledge of Ron Beit-Halachmy. Until the issuance of a Certificate of Completion or earlier termination of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, promptly give Notice of such fact or condition to City. The foregoing representations and warranties shall survive each Closing or any termination of this Agreement and continue until issuance of a Certificate of Completion.

3. REMEDIATION

3.1 Government Funded Remediation.

3.1.1 The City shall cause the Site to be remediated ("**Remediation Work**") pursuant to a Remediation Document approved by DTSC and obtain approval of the Remediation Work from DTSC.

3.1.2 Prior to submitting the Remediation Document to DTSC, the City shall provide the Developer with a draft copy and at least five (5) business days to submit comments regarding the Remediation Document to the City. The City shall consider any such comments received in good faith and incorporate into the Remediation Document if City determines in its sole and absolute discretion that it is reasonably feasible to incorporate the comments without jeopardizing DTSC's approval of the Remediation Document or exceeding the DTSC Grant.

3.1.3 City shall obtain DTSC's approval of the Remediation Document, commence the Remediation Work, and diligently prosecute the Remediation Work to completion within the times stated in the Schedule of Performance, subject to excused performance as provided under Section 10 of this Agreement.

3.1.4 Thereafter, City shall obtain approval of the Remediation Work from DTSC and any other government agency having jurisdiction over the Remediation Work ("**Remediation Approval**").

3.1.5 Remediation Approval may include approval of the Remediation Work subject to ongoing restrictions required by DTSC, including without limitation, restrictions related to the handling, transport, and disposal of soil to be removed from the Disposition Property, memorialized in a land use covenant to be recorded against the Disposition Property. When City has obtained Remediation Approval, City shall provide notice to Developer ("**Notice of Remediation Approval**").

3.2 Remediation Funding Shortfall. If the cost of the Remediation Work as required by appropriate government agencies having jurisdiction ("**Remediation Cost**") is determined to exceed the DTSC Grant, the City shall use reasonable diligence to identify and apply for an additional grant from DTSC or another government agency ("**Additional Remediation Funding**.") If Additional Remediation Funding is required and no Additional Remediation Funding is received by the City or the Additional Remediation Funding is insufficient, Section 3.2.1 or Section 3.2.2 shall apply.

3.2.1 City Contribution Obligation. If the Remediation Cost exceeds the sum of the DTSC Grant and any Additional Remediation Funding, or the DTSC Grant if no Additional Remediation Funding is obtained, and the remaining cost to remediate the Property is determined not to exceed the Purchase Price, City shall proceed with the transaction, provide Notice to Developer that City has made the City Contribution (the "**City Contribution Notice**") and contribute City's own funds toward the remaining portion of the Remediation Cost (the "**City Contribution**"); provided, however, that the City shall have no obligation to contribute more than the amount of the Purchase Price as the City Contribution. In the event that the City

Contribution exceeds the Purchase Price, the City shall provide notice to Developer ("**City Shortfall Notice"**) and the provisions set forth in Section 3.2.2 of this Agreement shall apply.

3.2.2 Developer Funding Termination Right. If the Remediation Cost exceeds the City Source Funding, following the City Shortfall Notice, Developer shall have the option in its sole discretion within sixty (60) days ("**Developer Funding Election Deadline**") of either (i) electing to proceed with the transaction by Notice to the City (the "**Developer Funding Election Notice**") together with a deposit into Escrow equal to the amount by which the Remediation Costs exceed City Source Funding (such excess, the "**Developer Contribution**"), or (ii) terminating the Agreement by Notice to the City ("**Developer Funding Termination Notice**") and Developer shall receive a refund of the Deposit.

3.3 Release of Escrow Funds. If Developer provides the Developer Funding Election Notice and the Developer Contribution, then within thirty (30) days after receipt of the same, City and Developer shall provide a joint Notice and instructions, signed by the Parties, to Escrow Holder seeking the release of the Developer Contribution for purposes of funding the Remediation Cost.

3.4 Completion of Remediation Work. Upon receipt of the Developer Contribution and/or any Additional Remediation Funding and making the City Contribution, City shall complete the Remediation Work and obtain Remediation Approval subject to the conditions set forth in Section 3.1 of this Agreement.

4. DISPOSITION AND DEVELOPMENT.

4.1 Phased Conveyance. City agrees to sell to Developer, and Developer agrees to purchase from City, the Disposition Property in accordance with and subject to the terms and conditions of this Agreement. The purchase and sale transaction shall occur via two (2) conveyances (each, a "**Phase Conveyance**"). The boundaries of the portion of the Disposition Property included within each Phase Conveyance shall be determined in connection with the Project Approvals. City shall make each Phase Conveyance by execution and delivery of a Grant Deed.

4.2 Purchase Price. The purchase price for the Disposition Property is Three Million Five Hundred Thousand Dollars ($3,500,000) ("**Purchase Price**").

4.3 Scope of Development. The Disposition Property must be used as a mixed-use project with at least the "**Minimum Program**" (as defined below) developed in each Phase. Upon final City approval of the Project Approvals, the project plans and conditions of approval, if any, shall be incorporated into the required Minimum Program.

4.3.1 For Phase 1, the Minimum Program shall include no fewer than 300 housing units, including independent living senior housing, 4,000 square feet of educational space, Infrastructure, and 16,000 square feet of retail and/or community facility space. No fewer than fifteen percent (15%) of the total units in Phase 1 shall be reserved as affordable for lower income households, specifically for the avoidance of doubt, units affordable to households with gross income equal to or less than 80% of the area median income, as further described in Applicable Laws.

4.3.2 For Phase 2, the Minimum Program shall include no fewer than 220 housing units no fewer than fifteen percent (15%) of which shall be reserved as affordable for lower income households (i.e., units affordable to households with gross income equal to or less than 80% of the area median income) and the remainder of which shall not be subject to any income restrictions and are anticipated to include market-rate units.

4.4 Project Approvals. Developer, at its sole cost and expense, shall secure or cause to be secured any and all land use and other entitlements, permits and approvals that may be required for development of the Project from the City and any other governmental agency having jurisdiction over development of the Disposition Property or applicable portion thereof (the "**Project Approvals**"), including any Project Approvals that the City has discretion to issue ("**Discretionary Approvals**"). The City shall review the Project Approvals in its regulatory capacity, and the City reserves the full extent of its discretion to approve, deny, or conditionally approve the Project. The Project Approvals shall include a map or other instrument sufficient to comply with the requirements of the Subdivision Map Act to define the boundaries of the City Facilities Property, the Park Property, the Disposition Property, the Phase 1 Property and the Phase 2 Property.

4.5 CEQA Review. The City has determined that the Project is consistent with the General Plan, for which the General Plan EIR was prepared and certified. However, subsequent environmental review is required to comply with CEQA prior to any Project approvals or disposition. Prior to the first Discretionary Approval, the City will prepare an Initial Study to analyze project-specific impacts and determine the form of environmental review, if any, that is required to comply with CEQA. Notwithstanding anything in this Agreement to the contrary, the City's obligation to issue any Project Approvals and complete the transfer of the Disposition Property hereunder is subject to City's compliance with CEQA. The City hereby agrees to diligently proceed with CEQA compliance and prosecute the same to completion without delay. The City does not commit to the Project by entering into this Agreement, nor does this Agreement commit the City to any particular physical feature of the Project so as to preclude any alternatives or mitigation measures that may otherwise be required to be considered in order to comply with CEQA, including the alternative of not going forward with the Project. The City and Developer hereby acknowledge and agree that if the City modifies the Project or does not approve the Project's Discretionary Approvals to avoid or reduce an environmental impact, nothing herein shall obligate Developer to agree to any such changes or proceed with the transaction if it determines in its sole discretion that such changes would make the Project infeasible. Developer agrees and acknowledges that, notwithstanding anything in this Agreement to the contrary, the City's compliance with CEQA is a prerequisite for transfer of the Disposition Property, and City's failure to transfer the Disposition Property as otherwise contemplated by this Agreement shall not be a breach of this Agreement if the City is otherwise fulfilling its obligation under this Section 4.5 and such failure is a result of the City needing to complete additional steps necessary to comply with CEQA or a result of Developer determining that CEQA compliance has made the Project infeasible. Once the City has taken first action on the Project Approvals, and the statute of limitations for challenging the City's actions to comply with CEQA has elapsed, the City shall be deemed to have complied with CEQA, and neither party shall have the right to terminate this Agreement without fault under this Section 4.5.

4.6 Duty to Prevent Further Hazardous Materials Contamination. After each Closing, Developer shall take all commercially reasonable precautions to prevent the release of any Hazardous Materials into the environment from the Disposition Property. Such precautions shall include compliance with all Environmental Laws. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with Environmental Laws as to disclosure, storage, use, removal and/or disposal of Hazardous Materials.

4.7 Notice of Hazardous Materials Release.

4.7.1 Before each Closing, in the event of a release of any Hazardous Materials onto or from the Disposition Property or any portion thereof, City shall, as soon as possible after the release, furnish to Developer a copy of any and all reports relating thereto and copies of all correspondence with regulatory agencies relating to the release. City shall immediately furnish to Developer a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Disposition Property or any portion thereof, including all permit applications, permits, and reports, including those reports and other matters which may be characterized as confidential.

4.7.2 After each Closing, in the event of a release of any Hazardous Materials onto or from the Disposition Property or any portion thereof, Developer shall, as soon as possible after the release, furnish to City a copy of any and all reports relating thereto and copies of all correspondence with regulatory agencies relating to the release. Developer shall immediately furnish to City a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Disposition Property or any portion thereof, including all permit applications, permits, and reports, including those reports and other matters which may be characterized as confidential.

5. FEASIBILITY PERIOD AND DEVELOPER'S INSPECTIONS.

5.1 No Warranties as to Disposition Property. Developer is purchasing the Disposition Property on the basis of Developer's own investigation of the physical and environmental conditions of the Disposition Property and the buildings, improvements and facilities thereon, including subsurface facilities and ground water and soils conditions.

5.2 AS-IS CONVEYANCE. DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND DEVELOPER IS PURCHASING THE DISPOSITION PROPERTY IN ACCORDANCE WITH THIS AGREEMENT ON AN "AS IS WITH ALL FAULTS" BASIS, CONDITION AND STATE OF REPAIR INCLUSIVE OF ANY AND ALL FAULTS AND DEFECTS, LEGAL, PHYSICAL, OR ECONOMIC, WHETHER KNOWN OR UNKNOWN, INCLUDING THE PRESENCE OF HAZARDOUS MATERIALS (WHETHER OR NOT REVEALED BY DEVELOPER'S DUE DILIGENCE INVESTIGATIONS) AS MAY EXIST AS OF EACH CLOSING ("**AS-IS CONDITION**"), SUBJECT TO THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, AND THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES FROM CITY OR ANY OF CITY'S ELECTED OFFICIALS, OFFICERS,

AGENTS, EMPLOYEES, REPRESENTATIVES OR ATTORNEYS (EACH, A "**CITY PARTY**" AND COLLECTIVELY, "**CITY PARTIES**") AS TO ANY MATTERS CONCERNING THE DISPOSITION PROPERTY.

5.3 Waiver and Release. Effective as of each Closing, Developer hereby waives, releases and discharges forever City Parties from any and all present and future Claims arising out of or in any way connected with the condition of the Disposition Property or applicable portion thereof, any Hazardous Materials on, under or about the Disposition Property or applicable portion thereof however they came to be placed there, or the release of Hazardous Materials from the Disposition Property or applicable portion thereof. Developer is aware of and familiar with the provisions of California Civil Code section 1542, which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

As it relates to this Section, Developer hereby waives and relinquishes all rights and benefits that it may have under California Civil Code section 1542.

5.4 Independent Investigation. Developer acknowledges, agrees, represents, and warrants that, prior to the Phase 1 Closing, Developer will have been given a full opportunity to obtain, review, inspect and investigate in accordance with this Section 5.4, and if Developer proceeds with the Phase 1 Closing, Developer will be deemed to have accepted, each and every aspect of the Disposition Property, either independently or through agents of Developer's choosing, including the following:

5.4.1 The size and dimensions of the Disposition Property.

5.4.2 Any restrictions imposed on the Disposition Property by DTSC.

5.4.3 The availability and adequacy of water, sewage, fire protection, and any other utilities serving the Disposition Property. Developer, at its election, shall be entitled to request adequate commitments to provide service for the utilities necessary for development of the Disposition Property prior to the Phase 1 Closing.

5.4.4 All matters relating to title including extent and conditions of title to the Disposition Property, taxes, assessments, and liens.

5.4.5 All legal and governmental laws, statutes, rules, regulations, ordinances, restrictions or requirements concerning the Disposition Property, including, without limitation, zoning, use permit requirements and building codes.

5.4.6 Natural hazards, including, without limitation, flood plain issues, currently or potentially concerning or affecting the Disposition Property.

5.4.7 The physical, legal, economic and environmental condition and aspects of the Disposition Property, and all other matters concerning the conditions, use or sale of the Disposition Property, including, without limitation, any permits, licenses, agreements, liens, zoning reports, engineers' reports and studies and similar information relating to the Disposition Property. Such examination of the condition of the Disposition Property has included examinations for the presence or absence of Hazardous Materials as Developer deemed necessary or desirable.

5.4.8 Any easements and/or access rights affecting the Disposition Property.

5.4.9 Any contracts and other documents or agreements affecting the Disposition Property.

5.4.10 All other matters of material significance affecting the Disposition Property.

5.5 Feasibility Period. Commencing on the Effective Date and ending sixty (60) days after Remediation Approval is obtained (the "**Feasibility Period**"), Developer shall have the right to inspect the Disposition Property as provided in Section 5.6 and review the condition of the Disposition Property, determine the suitability of the Disposition Property for Developer's intended use, and evaluate all other aspects of development feasibility, including financial viability and the matters set forth in Section 5.4. Developer shall also have the right during the Feasibility Period to review and approve the Condition of Title as provided in Section 6.4 below. The Feasibility Period may be extended by the City Manager in their sole discretion by providing Notice to Developer.

5.6 Right of Access.

5.6.1 During the Feasibility Period, or until the earlier termination of this Agreement, Developer, its employees, agents, consultants, lenders, investors, partners, contractors and subcontractors (collectively, "**Developer Parties**"), shall have the right to enter upon the Site on the terms and conditions set forth in this Section 5.6 and make surveys, take measurements, perform test borings or other tests of surface and subsurface conditions, including soils, soil gas and water, make engineering, architectural, environmental and other studies and inspect the Site (collectively, "**Inspections**") to determine if there are any adverse physical or environmental conditions of the Disposition Property, other than the conditions that will be addressed by the Remediation Work.

5.6.2 Developer agrees to provide notice to the City's Economic Development Manager and City Manager at least forty eight (48) hours prior to entering the Site or undertaking any studies or work thereon. City shall reasonably assist Developer in obtaining any written permission from DTSC that may be required prior to undertaking any borings, subsurface soil or ground water testing or other invasive investigations on or about the Site, including any buildings or structures thereon.

5.6.3 Developer shall provide City with copies of all data, survey and tests which Developer produces in connection with such studies and investigations promptly following receipt thereof.

5.6.4 Prior to any entry on the Site, Developer shall procure and maintain, and cause any other Developer Parties performing work or entering the Disposition Property or the Park Property to procure and maintain, commercial general liability, automobile liability and worker's compensation insurance covering Developer, and naming City as an additional insured, and otherwise meeting the requirements set forth in Exhibit E.

5.6.5 If Developer exercises its rights of entry under the provisions of this Section, Developer shall (i) keep the Site free of any liens or third-party claims resulting therefrom; (ii) take all reasonable precautions to prevent the release of any Hazardous Materials into the environment; (iii) indemnify and defend City against any liability or expense for injuries to or death of persons or damage to property of any nature whatsoever to the extent arising out of or resulting from Developer's exercise of its rights hereunder, including access to the Site by any Developer Parties; provided that Developer shall have no obligation to indemnify or defend City against any Claims arising from the active negligence or willful misconduct of City or City Parties; and (iv) if the Closing does not occur for any reason (other than a default by City), restore as nearly as practicable any portion of the Site damaged by such entry substantially to its condition immediately before such entry. In addition, if this Agreement is terminated for any reason, including a Default by either party or failure of a condition for the benefit of a party, Developer shall promptly repair and/or remedy any damage to any portion of the Site or improvements thereon resulting from such studies and investigations and restore the Site and improvements thereon as nearly as possible to the physical condition existing immediately prior to such damage.

5.6.6 Developer's indemnity and repair/restoration obligations under this Section 5.6 shall survive the expiration or any termination of this Agreement.

5.7 Feasibility Approval. If Developer elects to proceed with the purchase of the Disposition Property after conducting such Inspections, then as soon as practicable following completion of such Inspections, but in any event no later than expiration of the Feasibility Period, Developer may, in its sole discretion, deliver Notice of approval of the condition of the Disposition Property subject to satisfaction of Developer's Conditions Precedent set forth in Sections 6.8.1(a) and **Error! Reference source not found.** ("**Notice of Feasibility Approval**") to City and Escrow Agent. Developer's failure to give the Notice of Feasibility Approval prior to 5:00 p.m. Pacific time on the date of the expiration of the Feasibility Period shall not be a Default under this Agreement, but will be deemed Developer's disapproval of the condition of the Disposition Property and election not to proceed with the purchase of any portion of the Disposition Property and shall serve to terminate this Agreement effective as of the expiration of the Feasibility Period, unless the Parties mutually agree to extend the time for Developer to provide the Notice of Feasibility Approval. Upon such termination, the Deposit will be returned to Developer. If Developer gives its Notice of Feasibility Approval, then this Agreement shall continue in effect and the rights and obligations of the parties shall continue to be governed by this Agreement. Developer may not thereafter revoke or modify the Notice of Feasibility Approval, but the Phase 1 and Phase 2 Conveyances shall nevertheless remain subject to the satisfaction or waiver (by Developer in its reasonable discretion) of all applicable Developer Conditions Precedent with respect thereto.

6. ESCROW.

6.1 Opening of Escrow. Within the time set forth in the Schedule of Performance, Developer shall open Escrow for the Conveyances by delivering a fully executed Agreement to Escrow Agent ("**Opening of Escrow**.")

6.2 Deposit and Effect on Purchase Price. Within three (3) days of the Opening of Escrow, Developer shall deposit the sum of Three Hundred Fifty Thousand Dollars ($350,000) ("**Deposit**") into Escrow. The Deposit shall be credited against the Purchase Price, and a pro rata share of the Deposit shall be released to the City at each of the Phase 1 Closing and Phase 2 Closing. Developer shall also receive a credit against the Purchase Price in an amount equal to the ENRA Deposit, which City holds outside of Escrow and is non-refundable.

6.3 Escrow Instructions. This Agreement constitutes the joint escrow instructions of City and Developer with respect to the Phase 1 Conveyance and Phase 2 Conveyance, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The Parties shall use reasonable good faith efforts to close the Escrow for the Phase 1 Conveyance and Phase 2 Conveyance in the shortest possible time. All funds received in the Escrow shall be deposited for the benefit of the depositing Party in any state or national bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such accounts. If, in the opinion of either Party, it is necessary or convenient in order to accomplish the Phase 1 Closing or Phase 2 Closing, such Party may provide supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The Phase 1 Closing and Phase 2 Closing shall take place as set forth in Sections 6.9 and 6.10 below. Escrow Agent is instructed to release City's and Developer's escrow closing statements to the respective Parties.

6.4 Title Review.

6.4.1 Delivery of Preliminary Site Title Report. Developer shall cause Escrow Holder to deliver to City and Developer a preliminary tile report for the Site (the "**Preliminary Site Title Report**") together with copies of all documents relating to title exceptions shown in the Preliminary Site Title Report within thirty (30) days of Opening of Escrow.

6.4.2 Developer's Review. Developer shall have sixty (60) days from the receipt of the Preliminary Site Title Report ("**Title Review Period**") within which to notify City of any exceptions to title as shown in the Preliminary Site Title Report to which Developer disapproves. Any exceptions which are timely disapproved by Developer in writing pursuant to this Section shall be referred to collectively as the "**Title Objections**". If Developer fails to notify City of its disapproval of any matters shown in the Preliminary Site Title Report within the Title Review Period, Developer shall conclusively be deemed to have approved such matters. Matters shown on the Preliminary Site Title Report to which Developer does not object shall be included within the term "**Permitted Exceptions**."

6.4.3 City Title Response. If Developer notifies City of any Title Objections within the Title Review Period then, at City's sole discretion, City may elect (but shall not be

obligated) to remove or cause to be removed any of the Title Objections at City's expense, which removal shall be subject to Developer's reasonable approval. City shall notify Developer in writing ("**City's Title Response**") within thirty (30) days after receipt of Developer's Title Objections ("**City's Title Response Period**") whether City elects to remove the same. City's failure to deliver City's Title Response to Developer shall constitute City's election not to cure such Title Objections. If the City elects to cause the removal of any Title Objections, the City shall effectuate the removal within sixty (60) days following receipt by the Developer of City's Title Response or such other period of time that may be agreed to in writing by both the City and the Developer.

6.4.4 Developer's Title Termination. If City elects or is deemed to have elected not to cause any Title Objections to be removed, or if City is unable to remove a Title Objection it elected to remove within the time period established under Section 6.4.3, Developer may elect, by Notice to City within ten (10) days of City's Title Response (or within ten (10) days following the deadline to remove a Title Objection, as applicable), to terminate this Agreement, in which event each Party shall promptly execute and deliver to Escrow Agent such documents as Escrow Agent may reasonably require to evidence such termination and the respective obligations of Developer and City under this Agreement shall terminate, except as to matters which expressly survive termination, and City shall promptly instruct Escrow Agent to return the Deposit to Developer. Developer's failure to give such Notice of termination on or before such date shall constitute Developer's waiver of any Title Objections which City is unwilling or unable to cure, in which event such Title Objections shall be deemed acceptable to Developer.

6.5 Developer's Title Review Covenant. Developer shall be solely responsible for requesting updates of the Preliminary Site Title Report (each such updated Preliminary Site Title Report, a "**Title Update**") to determine if any new exceptions have been created after the date that Developer approves or is deemed to approve title pursuant to Section 6.4.2 or Section 6.4.4 above ("**Reference Date**"). At a minimum, Developer shall request that Escrow Holder prepare a Title Update that covers only the Phase 1 Property within a reasonable time in advance of Phase 1 Closing, which shall be used to create the Phase 1 Title Policy, and a Title Update covering only the Phase 2 Property within a reasonable time in advance of Phase 2 Closing, which shall be used to create Phase 2 Title Policy. Any Title Update shall be delivered to both Developer and City.

6.6 City's Title Covenant.

6.6.1 City agrees that it shall not voluntarily permit or cause to be created during the period between the Reference Date and the Phase 1 Closing or the period between the Reference Date and the Phase 2 Closing any exceptions to title other than the Permitted Exceptions without Developer's prior written consent, which shall not be unreasonably withheld (the "**City's Title Covenant**"). A breach of the City's Title Covenant shall be a Default and Developer shall have the remedies set forth in Section 6.6.2. Notwithstanding the foregoing, Developer expressly acknowledges and agrees that the following shall be Permitted Exceptions, and the addition of such items shall be consistent with the City's title Covenant and shall not be a Default: the Declaration of Affordable Housing Restrictions, in substantially the form attached hereto as Exhibit F ("**Affordable Housing Declaration**"). For the avoidance of doubt, any documents that DTSC or any other governmental agency with jurisdiction over the Remediation

Work requires City to record against the Site with respect to restrictions on the use of the Site due to the presence of the Hazardous Materials that necessitated the Remediation Work shall be accepted as a Permitted Exception only following Developer's review and approval, which shall not be unreasonably withheld or delayed.

6.6.2 If, during the period between the Reference Date and the Phase 1 Closing or the period between the Reference Date and the Phase 2 Closing, any new exceptions to title arise without Developer's prior written consent, then Developer may object to such new exception by notice to City given within twenty (20) days after Developer receives a Title Update showing the new exception. If Developer fails to object within such period, then the new exception will be deemed to be a Permitted Exception. If the Developer does object, then City may elect in City's sole and absolute discretion, at its cost, to remove any new exceptions that are not Permitted Exceptions prior to the applicable Phase 1 Closing or Phase 2 Closing. If City does so elect, it will notify Developer within ten (10) days after receipt of Developer's objection. If City elects not to remove or cause to be eliminated the exception, or fails to respond within the ten (10) day period, then Developer shall have the right to: (i) terminate this Agreement by notice to City delivered within ten (10) days after Developer receives City's notice that it has elected not to remove or cause to be eliminated the exception or expiration of the ten (10) day period, whichever occurs earlier; (ii) upon Notice provided to City within ten (10) days of City's election not to remove or cause to be eliminated the exception or failure to respond, diligently proceed to take such actions necessary to remove the exception, which may include obtaining an endorsement insuring over such exception subject to such conditions and requirements imposed by Escrow Holder; or (iii) proceed with the Phase 1 Closing or Phase 2 Closing subject to such exception. If Developer elects clause (ii) and fails to so terminate or elect to cure within the ten (10) day period, then it shall be deemed to have elected clause (iii) above. Exceptions that City elects not to remove or cause to be eliminated, or is deemed to have elected not to remove or cause to be eliminated, and that Developer elects to accept, or is deemed to have accepted, are also Permitted Exceptions. If Developer elects clause (i), each Party shall promptly execute and deliver to Escrow Agent such documents as Escrow Agent may reasonably require to evidence such termination and the respective obligations of Developer and City under this Agreement shall terminate, except as to matters which expressly survive termination, and City shall promptly instruct Escrow Agent to return the Deposit to Developer if Developer elects clause (i) with respect to the Phase 1 Closing.

6.7 City Conditions Precedent.

6.7.1 Phase 1. The following are City's conditions precedent to the Phase 1 Closing ("**City Phase 1 Closing Conditions Precedent**"), which must be satisfied or waived within the times provided on the Schedule for Performance, except that the conditions in subsections (a) and (b) cannot be waived:

(a) City's completion of CEQA Review, as set forth in Section 4.5;

(b) City's completion and receipt of approval of the Remediation Work from DTSC and any other state or federal agencies having jurisdiction;

(c) City's receipt and approval, not to be unreasonably withheld, conditioned or delayed, of Developer's budget for construction of the Project;

(d) City's receipt and approval, not to be unreasonably withheld, conditioned or delayed, of Developer's financing plan for construction of the Project;

(e) Developer's receipt of the Project Approvals;

(f) Recordation of access and utilities easements over the City Facilities Property for the benefit of the Disposition Property;

(g) City's receipt and approval, not to be unreasonably withheld, conditioned or delayed, of reasonably acceptable evidence that loans have closed or will close at the Phase 1 Closing in amounts sufficient to design, develop and construct Phase 1;

(h) City's receipt of complete application(s) and all applicable fees due and owed for all necessary grading and building permits for Phase 1, and City's determination that City is ready to issue such permits;

(i) City's receipt of certificates of insurance, copies of insurance policies, or other reasonably acceptable evidence that Developer has obtained insurance satisfying the requirements set forth in Exhibit G;

(j) City's receipt of a fully executed contract between Developer and a construction contractor for Phase 1 ("**Phase 1 Construction Contract**");

(k) Developer's deposit of the product of the Purchase Price Balance and a fraction, the numerator of which is the square footage of the Phase 1 Property and the denominator of which is the square footage of the Disposition Property ("**Phase 1 Consideration**");

(l) Escrow Holder shall have committed to provide the Phase 1 Title Policy upon the Phase 1 Closing subject only to payment for it in accordance with Section 6.11 below;

(m) Developer shall not be in Default of any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained in Section 2.2 herein shall be true and correct in all material respects.

6.7.2 Phase 2. The following are City's conditions precedent to the Phase 2 Closing ("**City Phase 2 Closing Conditions Precedent**") which must be satisfied or waived within the times provided on the Schedule for Performance, provided that the conditions in subsections (a) and (b) cannot be waived:

(a) The occurrence of the Phase 1 Closing;

(b) Developer's satisfaction of the Phase 1 Milestones;

(c) City's receipt and approval of reasonably acceptable evidence that loans have closed or will close at the Phase 2 Closing in amounts sufficient to design, develop and construct Phase 2;

(d) City's receipt of complete application(s) and all fees for all necessary grading and building permits for Phase 2, and City shall have issued or be ready to issue such permits;

(e) City's receipt of certificates of insurance, copies of insurance policies, or other reasonably acceptable evidence that Developer has obtained insurance satisfying the requirements set forth in Exhibit G;

(f) City's receipt of a fully executed contract between Developer and a construction contractor for Phase 2 ("**Phase 2 Construction Contract**");

(g) Developer's deposit of the remaining Purchase Price Balance (calculated by subtracting the Phase 1 Consideration from the Purchase Price Balance) ("**Phase 2 Consideration**");

(h) Escrow Holder shall have committed to provide the Phase 2 Title Policy upon the Phase 2 Closing subject only to payment for it in accordance with Section 6.11 below;

(i) Developer shall not be in Default of any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained in Section 2.2 herein shall be true and correct in all material respects.

6.7.3 Failure of a City Closing Condition Precedent. Provided that City has fulfilled all of its obligations hereunder and under applicable law with respect thereto, City shall have the right to terminate this Agreement, by providing Notice to Developer, only in the event of a failure of those certain City Phase 1 Closing Conditions Precedent set forth in Section 6.7.1(a) or (f). Upon such termination, the Deposit will be returned to Developer and neither the City nor Developer shall have any further rights against or liability to the other under this Agreement, except for indemnification rights that survive termination of this Agreement. City shall have the rights and remedies set forth in Section 9.2 in the event of a failure of any other City Phase 1 Closing Condition Precedent. City shall have the right, in its sole discretion, to elect the rights and remedies set forth in Section 9.2 or Section 9.3 in the event of a failure of any of the City Phase 2 Closing Condition Precedent described in Section 6.7.2(b) through (j).

6.8 Developer Closing Conditions Precedent.

6.8.1 Phase 1. The following are Developer's conditions precedent to the Phase 1 Closing ("**Developer Phase 1 Closing Conditions Precedent**"), which must be satisfied or waived within the times provided on the Schedule for Performance:

(a) City's completion of the Remediation Work pursuant to the Remediation Document and City's receipt of approval of the Remediation Work from DTSC and any other state or federal agencies having jurisdiction;

(b) Developer's approval of title pursuant to Section 6.4;

(c) Developer's approval of the condition of the Disposition Property pursuant to Section 5.7, including Developer's approval of the Post-Remediation Condition, if applicable;

(d) City's approval of the Project;

(e) City's vacation of the Right of Way;

(f) Recordation of access and utility easements over the City Facilities Property for the benefit of the Disposition Property;

(g) If Developer decides, in its sole discretion, to pursue a Community Development Block Grant (CDBG) as part of its financing, City and federal approval for such Community Development Block Grant (CDBG) for offsite improvements only from the City's Housing Division in the estimated amount of $300,000, subject to the public participation process;

(h) Escrow Holder shall have committed to provide the Phase 1 Title Policy upon the Phase 1 Closing subject only to payment for it in accordance with Section 6.11 below;

(i) City shall not be in Default of any of its obligations under the terms of this Agreement and all representations and warranties of City contained in Section 2.1 herein shall be true and correct in all material respects.

6.8.2 The following are Developer's conditions precedent to the Phase 2 Closing ("**Developer Phase 2 Closing Conditions Precedent**"):

(a) Developer's approval of title pursuant to Section 6.4;

(b) Escrow Holder shall have committed to provide the Phase 2 Title Policy upon the Phase 2 Closing subject only to payment for it in accordance with Section 6.11 below;

(c) City shall not be in Default of any of its obligations under the terms of this Agreement and all representations and warranties of City contained in Section 6.11 herein shall be true and correct in all material respects.

6.8.3 Failure of a Developer Closing Condition Precedent.

(a) In the event of a failure of any Developer Phase 1 Closing Condition Precedent, Developer shall have the right to terminate this Agreement by providing Notice to City. Upon such termination, the Deposit will be returned to Developer and neither the City nor Developer shall have any further rights against or liability to the other under this Agreement, except for those provisions of this Agreement that expressly survive termination of this Agreement.

(b) In the event of a failure of any Developer Phase 2 Closing Condition Precedent, Developer shall have the right to terminate those portions of this Agreement specifically relating to Phase 2 by providing Notice to City. Upon such termination, the provisions of this Agreement pertaining to development of Phase 1 shall survive the termination (including without limitation Sections 2.2, 5.6, 8.1.1, 8.2, 8.3, 8.4, 8.5, 11, and 12).

6.9 Phase 1 Closing. The Closing for the Phase 1 Conveyance ("**Phase 1 Closing**") shall occur within ninety (90) days of the satisfaction or waiver of all conditions precedent set forth in Section 6.7.1 and Section 6.8.1, but no later than the time set forth in the Schedule of Performance ("**Phase 1 Outside Closing Date**"). The actual date of the Phase 1 Closing shall be the "**Phase 1 Closing Date**."

6.9.1 Phase 1 Closing Procedure. Escrow Holder shall:

(a) Prior to any other documents, record the Affordable Housing Declaration against the Disposition Property;

(b) If not previously recorded, record the easement documents described in Section 6.7.1(f) and 6.8.1(e);

(c) Record the Grant Deed for the Phase 1 Conveyance with instructions for the County Recorder to send the Grant Deed for Phase 1 to Developer;

(d) Deliver the Phase 1 Title Policy to Developer; and

(e) Release to City the Phase 1 Consideration;

(f) Release to City the product of the Deposit and a fraction, the numerator of which is the square footage of the Phase 1 Property and the denominator of which is the square footage of the Disposition Property; and

(g) Forward to Developer and City an accounting of all funds received and disbursed for each Party and conformed copies of all executed and recorded or filed documents, with the recording or filing date shown thereon.

6.10 Phase 2 Closing. The Closing for the Phase 2 Conveyance ("**Phase 2 Closing**") shall occur within thirty (30) days of the satisfaction or waiver of all conditions precedent set forth in Section 6.7.2 and Section 6.8.2 above, but no later than the time set forth in the Schedule of Performance ("**Phase 2 Outside Closing Date**"). The actual date of the Phase 2 Closing shall be the "**Phase 2 Closing Date**."

6.10.1 Phase 2 Closing Procedure. Escrow Holder shall:

(a) Record the Grant Deed for Phase 2 with instructions for the County Recorder to send the Grant Deed for Phase 2 to Developer;

(b) Deliver the Phase 2 Title Policy to Developer;

(c) Release to City the Phase 2 Consideration;

(d) Release to City the product of the Deposit and a fraction, the numerator of which is the square footage of the Phase 2 Property and the denominator of which is the square footage of the Disposition Property; and

(e) Forward to Developer and City an accounting of all funds received and disbursed for each Party and conformed copies of all executed and recorded or filed documents, with the recording or filing date shown thereon.

6.11 Closing Costs. City shall pay one half (1/2) and Developer shall pay one half (1/2) of the premium for the CLTA Owner's policies of title insurance for the Phase 1 Conveyance and the Phase 2 Conveyance ("**Phase 1 Title Policy**" and "**Phase 2 Title Policy**", respectively). Developer shall pay the cost of any special title endorsements which Developer elects to obtain for the Phase 1 Title Policy, or Phase 2 Title Policy. Recording fees, if any, for the Grant Deeds shall be paid by Developer. City shall pay all County transfer taxes. City transfer taxes, if any, shall be paid one half (1/2) by City and one half (1/2) by Developer. Any other closing costs and expenses not specifically allocated to one of the Parties hereunder shall be paid one half (1/2) by City and one half (1/2) by Developer.

7. CITY'S POST CLOSING COVENANTS

7.1 Fee Reductions. Developer shall be eligible for the Stockton Economic Stimulus Plan program or any replacement program to reduce or waive specified Public Facility Fees.

7.2 Certificate of Completion. Once each Phase of the Project is Substantially Complete, Developer shall be entitled to obtain, and City shall be obligated to provide, a Certificate of Completion for each Phase substantially in the form of Exhibit H attached hereto and incorporated herein by this reference and which Developer shall be entitled to record immediately with the San Joaquin County Clerk and Recorder's Office. City shall not unreasonably withhold, condition or delay any such Certificate of Completion once the applicable Phase of the Project is Substantially Complete.

7.3 Covenants with respect to the Park Property, Promenade, and City Facilities Property. City covenants and agrees that the Park Property, Promenade, and City Facilities Property shall be used in accordance with the City's General Plan, any applicable Specific Plan, and any City laws that may be adopted or amended from time to time. Developer shall not be required to operate or maintain the Park Property, Promenade, or City Facilities Property, provided that at Developer's election, City shall enter into a license agreement with Developer for the maintenance of certain elements of the Park Property and/or Promenade in substantially the form of Exhibit J attached hereto. Developer covenants and agrees to invest not less than $250,000 total ($125,000 for Phase 1 and $125,000 for Phase 2) in the selection and installation of artwork, pursuant to a transparent process run by Developer, such as murals, sculptures, installations and other forms of artwork, with a goal of supporting and showcasing local artists, which artwork shall be placed on and around a combination of the Disposition Property, the Park Property and the Promenade and shall be visible and/or accessible to the public at large, subject to reasonable rules and regulations.

8. DEVELOPER'S POST CLOSING COVENANTS

8.1 Schedule of Performance. The Project shall be developed in accordance with, and Developer shall comply with the obligations set forth in, the Schedule of Performance. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between Developer and the City Manager. The obligations set forth in the Schedule of Performance shall survive the Phase 1 Closing and the Phase 2 Closing.

8.1.1 Phase 1 Milestones. Developer shall fulfill the Phase 1 Milestones within the times set forth for each of them in the Schedule of Performance.

8.1.2 Phase 2 Milestones. Developer shall fulfill the Phase 2 Milestones within the times set forth for each of them in the Schedule of Performance.

8.2 Cost of Construction. Unless otherwise expressly stated herein, all of the costs of planning, designing, developing and constructing the Project and all applicable improvements on the Disposition Property, and any improvements required by City conditions of approval, shall be borne solely by Developer.

8.3 Intentionally Omitted.

8.4 Compliance with Applicable Laws. Developer shall carry out, and shall ensure that its contractors and subcontractors carry out, the Project work in conformity with all Applicable Laws.

8.5 Insurance and Indemnity.

8.5.1 Insurance. At all times, Developer shall maintain the policies described in Exhibit G (except that a Builder's Risk policy shall only be required until Completion of Construction of the Project and a property insurance policy shall be required after Completion of Construction of the Project) and comply with the terms and conditions of Exhibit G.

8.5.2 Indemnity. Developer shall indemnify, defend (with counsel reasonably acceptable to City), protect, and hold City and City Parties harmless from and against any and all Claims, including Claims for any bodily injury, death, or property damage, to the extent directly or indirectly arising or resulting from (i) Developer's Inspections as provided in Section 5.6 above; (ii) the construction or installation of any Phase Improvements; (iii) discovery of Hazardous Materials not identified in the Phase I Assessment or Phase II Assessment on or about the Disposition Property, including requirements for additional remediation work; (iv) Developer or Developer Parties' release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Disposition Property; (v) Developer or Developer Parties' violation of any of the Applicable Laws, including Environmental Laws; (vi) Developer's failure to pay wages in accordance with any applicable Prevailing Wage Laws and actions seeking a determination of the Prevailing Wage Laws' applicability to the Project; and/or (vii) any acts, omissions, negligence or willful misconduct of Developer under this Agreement, whether such acts, omissions, negligence or willful misconduct are by Developer or any Developer Parties. Developer's indemnity obligations under this Section shall not apply to the extent such Claims

arise from the active negligence or willful misconduct of City or any City Parties. Developer's obligations under this Section shall survive any Closing, issuance of the Certificate of Completion and any termination of this Agreement.

8.6 Local Hiring.

8.6.1 Developer acknowledges the benefits to the Project and the City of Stockton of local hiring for the construction of the Project. To that end, Developer agrees, and will require its contractors to agree, to endeavor, using good faith efforts, to hire residents of Stockton who are otherwise qualified and meet the applicable job criteria for the construction of the Project with a target of hiring approximately fifty percent (50%) of the total construction workforce from Stockton residents. For purposes hereof, good faith efforts shall include the following to the extent available and practical: (1) placing valid job orders for vacant positions with the local office of the State Employment Development Department and Worknet of San Joaquin County, (2) advertising vacant positions, job informational meetings, job application workshops, job application centers and job interviews in conspicuous local authorized public places, (3) hosting job informational meetings to inform the community of employment opportunities, (4) providing assistance to Stockton residents in completing job application forms, (5) working with local resources to identify locating in the City of Stockton where job applications can be obtained, delivered to and collected, (6) advertising vacant positions through one or more of various local media, including community television network, local newspapers of general circulation, and trade papers or minority focus newspapers, (7) telephone outreach to potential local subcontractors, and (8) other means that are reasonably expected to identify qualified residents of Stockton for vacant positions.

8.6.2 Developer and/or the contractor shall maintain reasonably detailed records documenting such parties' local hiring efforts, actual local hires, and their respective jobs.

8.6.3 For purposes hereof, a resident of Stockton shall mean an individual who has been domiciled within the boundaries of Stockton for at least one (1) year immediately preceding the date of the award of contract and who can verify his or her domicile upon request of the contractor by producing documentation such as a rent/lease agreement, telephone and utility bills or payment receipts, a valid California driver's license or identification card, and/or any other similar, reliable evidence that verifies that the individual is domiciled within Stockton. For the purposes of this section, the following Zip Code areas are considered to be within Stockton: 95202, 95203, 95204, 95205, 95206, 95207, 95209, 95210, 95212, 95215 and 95219.

8.6.4 The provisions of this Section 8.6 shall not apply to construction contracts or portions thereof or to job vacancies for work that is of a highly specialized nature.

8.7 Local Sales Tax. Developer shall use commercially reasonable efforts to the extent allowed by law to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to (a) obtain a use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars ($5,000,000) or more; or (c) otherwise designate the Disposition Property as the place of use of material used in the construction of the Project in

order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct each of its subcontractors to cooperate with City to ensure the full local sales/use tax is allocated to City. To assist City in its efforts to ensure that the full amount of such local sales/use tax is allocated to the City, Developer shall provide City with an annual spreadsheet, which includes a list of all subcontractors with contracts in excess of the amount set forth above, a description of all applicable work, and the dollar value of such subcontracts. City may use said spreadsheet sheet to contact each subcontractor who may qualify for local allocation of use taxes to the City.

8.8 Public Improvement Agreement; License; Encroachment Permits. Prior to the deadline for Commencement of Construction of Infrastructure set forth in the Schedule of Performance, Developer and City shall enter into a Public Improvement Agreement for the construction of any Infrastructure that will be dedicated to City. For Infrastructure located on the Phase 2 Property, City and Developer shall enter into a license agreement to provide Developer access to the Phase 2 Property and Developer shall execute any encroachment permits that City deems necessary for the construction of the Infrastructure prior to the deadline for Commencement of Construction of Infrastructure set forth in the Schedule of Performance.

8.9 Pump Station. If reasonably required and requested in writing, Developer shall be a co-applicant with City on, and reasonably assist City in preparation of, a grant application for construction of a new pump station, provided that any costs to Developer in connection therewith shall be paid or reimbursed by City.

9. DEFAULT AND REMEDIES.

9.1 Default. Failure by either party to perform any action or covenant required by this Agreement within thirty (30) days following receipt of Notice from the other party specifying the failure ("**Notice of Default**") shall constitute a "**Default**" under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such thirty (30) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such party commences to cure the failure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion. Upon occurrence of such Default, subject to the continuance thereof for any additional cure period provided herein, the non-defaulting party shall have all remedies available to it under this Agreement, including the right to terminate this Agreement as set forth in Section 9.2.1 or 9.2.3 below. Neither party shall have the right to recover any punitive, consequential, or special damages.

9.2 Remedies.

9.2.1 Deposit as Liquidated Damages. IF CITY IS NOT IN DEFAULT, THERE HAS NOT BEEN A FAILURE OF ANY DEVELOPER PHASE 1 CLOSING CONDITION PRECEDENT, AND THE PHASE 1 CLOSING DOES NOT OCCUR BY THE PHASE 1 OUTSIDE CLOSING DATE (AS SUCH DATE MAY BE EXTENDED DUE TO FORCE MAJEURE CONDITIONS) DUE TO FAILURE OF A CITY PHASE 1 CLOSING CONDITION PRECEDENT THAT IS NOT DESCRIBED IN SECTION 6.7.3 ("**CLOSING FAILURE**"), THE PARTIES ACKNOWLEDGE AND AGREE THAT CITY WILL SUFFER DAMAGES, INCLUDING COSTS OF COOPERATING IN SATISFYING CONDITIONS TO

CLOSING, COSTS OF SEEKING ANOTHER DEVELOPER FOR THE SITE, OPPORTUNITY COSTS IN KEEPING THE SITE OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HEREWITH, AND THAT IT IS IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE, IN THE EVENT OF A CLOSING FAILURE, CITY MAY TERMINATE THIS AGREEMENT AND RETAIN THE DEPOSIT, WHICH AMOUNT SHALL SERVE AS LIQUIDATED DAMAGES TO CITY FOR SUCH CLOSING FAILURE. RETENTION OF THE DEPOSIT SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY AGAINST DEVELOPER IN THE EVENT OF A CLOSING FAILURE, AND CITY WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST DEVELOPER, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE; PROVIDED, HOWEVER, ALL OF DEVELOPER'S OBLIGATIONS TO INDEMNIFY CITY AS PROVIDED HEREIN THAT, BY THEIR TERMS, EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT, SHALL BE SEPARATE, ADDITIONAL, AND INDEPENDENT OBLIGATIONS OF DEVELOPER SURVIVING THE TERMINATION OF THIS AGREEMENT.

THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION ARE NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTIONS 3275 OR 3369 OF THE CALIFORNIA CIVIL CODE, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO CITY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. BY PLACING THEIR INITIALS BELOW, DEVELOPER AND CITY SPECIFICALLY CONFIRM THE ACCURACY OF THE STATEMENTS MADE ABOVE, THE REASONABLENESS OF THE AMOUNT OF LIQUIDATED DAMAGES AGREED UPON, AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: _____ _____

CITY DEVELOPER

9.2.2 Upon the occurrence of a Default by Developer other than a Closing Failure, City shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy such Default, including the recovery of actual damages. Upon the occurrence of a Default by City, Developer shall have the right to institute any action at law or in equity to cure, correct, prevent or remedy such Default. Developer's remedies in any legal action Developer brings in the event of a Default by City shall be limited to obtaining specific performance or injunctive relief. Such legal actions must be instituted in the Superior Court of the County of San Joaquin, State of California, or in the Federal District Court for the Eastern District of the State of California. Notwithstanding anything herein to the contrary, neither Party shall have the right to recover any consequential, special or punitive damages in the event of a Default by the other Party.

9.2.3 Upon the occurrence of a Default by Developer other than a Closing Failure, in the event City is not in Default under this Agreement, City may terminate this

Agreement (subject to the notice and cure provisions set forth in Section 9.1) by Notice to Developer (and pursue its remedies for Default, if applicable, including pursuing any and all other legal remedies it may have and/or its Right of Reverter as set forth in Section 9.3 below). Upon the occurrence of a Default by City, in the event Developer is not in Default under this Agreement, Developer may terminate this Agreement (subject to the notice and cure provisions set forth in Section 9.1) by Notice to City (and pursue its remedies for Default, if applicable, including pursuing any and all other legal remedies it may have).

9.3 City Option to Repurchase, Reenter and Repossess (Right of Reverter)

9.3.1 Events Triggering Right of Reverter. Subject to Notice and opportunity to cure under Section 9.1 and any applicable extension(s) for Force Majeure Delay(s) under Section 10 and so long as not caused by a City Default, then City shall have, following an additional 180 days advance written notice and opportunity to cure, the additional right, at its option:

(a) To repurchase, reenter and take possession of Phase 1 ("**Phase 1 Right of Reverter**") if after conveyance of title to Phase 1 and prior to Substantial Completion of Phase 1, Developer shall (i) fail to meet any of the Phase 1 Milestones within the time set forth on the Schedule of Performance; or (ii) abandon or substantially suspend construction of the Project for a period of six (6) consecutive months after Commencement of Construction of the Project prior to obtaining a Certificate of Completion for Phase 1; and

(b) To repurchase, reenter and take possession of Phase 2 ("**Phase 2 Right of Reverter**") if after conveyance of title to Phase 2 and prior to Substantial Completion of Phase 2, Developer shall (i) fail to meet any of the Phase 2 Milestones within the time set forth on the Schedule of Performance; or (ii) abandon or substantially suspend construction of the Project for a period of six (6) consecutive months after Commencement of Construction of the Project.

The Phase 1 Right of Reverter and Phase 2 Right of Reverter shall each individually be referred to as a "**Right of Reverter**."

9.3.2 Mortgagee Rights. Any such Right of Reverter, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(a) Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

(b) Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

9.3.3 Notwithstanding anything in this Section 9.3 to the contrary, in the event the City approves a Ground Lease Structure (hereinafter defined), the City shall negotiate in good faith with Developer and the ground lessor to agree upon additional and reasonable ground lessor rights and protections with respect to the Right of Reverter, including a standstill period before exercising the Right of Reverter, additional notice and cure periods for the ground lessor in the event of Developer Defaults, and other commercially reasonable rights and protections

requested by Developer and/or the ground lessor, provided that the City shall only agree to such rights and protections if the ground lessor agrees in a written form reasonably acceptable to City that ground lessor shall fulfill all of Developer's material obligations under this Agreement following a Developer Default.

9.3.4 Process for City Exercise. To exercise a Right of Reverter, City shall pay to Developer in cash an amount equal to:

(a) Any Phase 1 Consideration or Phase 2 Consideration, as applicable, paid by Developer as of the date of exercise of the Right of Reverter; plus

(b) The actual out-of-pocket soft costs incurred by Developer and paid to unaffiliated third parties for design and architectural services for the Project (or applicable portion thereof) and hard costs incurred by Developer and paid to unaffiliated third parties for labor and materials for the construction of the Project (or applicable portion thereof) through the time of the repurchase, reentry and repossession; less

(c) Any gains or income withdrawn or made by Developer from Phase 1 with respect to a Phase 1 Right of Reverter and from Phase 2 only with respect to a Phase 2 Right of Reverter, or the Project; less

(d) The total amount of any mortgages, deeds of trust or other liens encumbering Phase 1 and Phase 2 (with respect to a Phase 1 Right of Reverter) or Phase 2 only with respect to a Phase 2 Right of Reverter at the time of the repurchase, reentry and repossession.

In order to exercise such Right of Reverter, City shall give Developer Notice of such exercise and Developer shall, within sixty (60) days after Developer's receipt of such Notice, provide City with a detailed accounting of all of Developer's costs incurred as provided in subparagraph (b) above. City, within thirty (30) days thereafter, shall pay to Developer in cash all sums owing pursuant to this Section, if any, and Developer shall thereupon execute and deliver to City a grant deed transferring to City all of Developer's interest in the Disposition Property.

City's rights under this Section with respect to each Phase shall terminate upon the City's issuance of the Certificate of Completion for such Phase to the Developer.

9.4 Rights of Mortgagees. City shall deliver a copy of any Notice or demand to Developer concerning any alleged breach or Default by Developer under this Agreement to each Mortgagee, provided that City shall have no obligation to do so unless Developer has complied with Section 11.1.2 detailing the procedure for a Permitted Transfer with respect to the Mortgagee. Such Mortgagee shall have the right at its option to cure or remedy any such breach or Default and to add the cost thereof to the secured debt and the lien of its security interest. If such breach or Default can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee may remedy or cure such breach or default within a reasonable period of time after obtaining possession, provided such Mortgagee seeks possession with diligence through a receiver or, if not possible, then by nonjudicial foreclosure or deed in lieu of foreclosure. The Mortgagee shall not be obligated by the provisions of this Agreement to

construct or complete the Project or any portion thereof or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such Mortgagee; provided, however, that (i) nothing in this Agreement shall be deemed to permit or to authorize such Mortgagee to devote the Project or any portion thereof to any uses or to construct any improvements thereon other than those uses and improvements provided for or authorized in this Agreement and (ii) such Mortgagee shall not undertake or continue the construction or completion of the improvements comprising the Project beyond the extent necessary to conserve or to complete the same without assuming Developer's obligations hereunder. Any Mortgagee completing the Project shall have and be subject to all of the rights and obligations of Developer set forth in this Agreement.

9.5 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City or City under this Agreement, service of process on City or City shall be made by personal service upon the City Clerk in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer under this Agreement, service of process on Developer shall be made by personal service upon Mike Hakeem, or in such other manner as may be provided by law.

9.6 Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

9.7 Inaction Not a Waiver of Default. Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

10. FORCE MAJEURE. All performance deadlines in this Agreement shall be extended to the extent of delays caused beyond the control or without the fault of the Party claiming an extension of time to perform, including, without limitation, the following: war; acts of terrorism; insurrection; strikes; lockouts; labor troubles; inability to procure materials; power failures; riots; floods; earthquakes; fires; other natural disasters; casualties; acts of God; epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions or closure of the offices of governmental agencies having jurisdiction over the Disposition Property or the Project; freight embargoes; lack of transportation; governmental restrictions or priority; governmental moratoria; initiation of condemnation proceedings by any governmental agency; and unreasonable acts or unreasonable failures to act of City or any other public or governmental Agency or entity (determined considering the normal processes and response times of City and such governmental entities, which shall be deemed reasonable and not force majeure delays) ("**Force Majeure**"), provided, however, that conditions related to or arising from COVD-19 as of the Effective Date shall not constitute conditions giving rise to Force Majeure. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay only, and in the event of such an extension of time for construction, an additional period of time not to exceed sixty (60) days for the

mobilization of contractors, and shall commence to run from the time of the commencement of the cause, and only if Notice by the Party claiming such extension is sent to the other Party within sixty (60) days after the commencement of the cause.

11. TRANSFERS.

11.1 Prohibition; Permitted Transfers.

11.1.1 Prohibition. The qualifications and identity of Developer are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Agreement with Developer. Except as provided in Section 11.1.2, prior to the City's issuance of the Certificate of Completion, Developer shall not assign or transfer this Agreement, Phase 1, Phase 2, or any portion of Phase 1 or Phase 2 (each, a "**Transfer**") without the prior written approval of the City Manager in his or her sole and absolute discretion through the process provided in Section 11.2 or, at the City Manager's discretion, following approval from the City Council. The term "**Transfer**" for the purposes of this Section shall include any change in the Control of Developer by any method or means. The term "**Control**" as used herein, shall mean the power to direct the Day-to-Day Management of Developer, and it shall be a presumption that Control with respect to a corporation or limited liability company is the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the Controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, Control is the possession, indirectly or directly, of the power to direct or cause the direction of the day-to day-management of the controlled entity.

11.1.2 Permitted Transfer. Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or conveyance of the Disposition Property or Project, or any part thereof, shall not be required in connection with any of the following (each, a "**Permitted Transfer**"):

(a) The granting of reasonable easements or permits to facilitate construction of the Project;

(b) An assignment of this Agreement to an Affiliate of Developer;

(c) Deeds of trust from lenders for the purpose of securing a loan or loans of funds to be used for financing the costs of the Project;

(d) Transfers of common area to a property owners association;

(e) The lease of individual tenant space(s) in the retail space or educational space;

(f) The lease of residential units in the Project.

Developer shall give at least ten (10) business days' prior Notice to City of a Permitted Transfer, except that no such Notice shall be required for any Permitted Transfer under subsection (d) and (f) or once the termination of Transfer Restrictions has occurred pursuant to subsection 1.5.4 below. In addition, City shall be entitled to review such documentation as may

be reasonably required by City to confirm the proposed Transfer is a Permitted Transfer.

11.2 Process for City Review of Proposed Transfer. The process set forth in this Section shall apply to any proposed Transfer that is not a Permitted Transfer. Developer shall notify City of any proposed Transfer at least thirty (30) days prior to completing any Transfer. Except as otherwise provided in this Section, the City Manager may withhold, condition or delay its approval of a Transfer in its sole and absolute discretion. Prior to consideration by the City Manager of any proposed Transfer, Developer shall deliver to City a statement of qualifications and financial capability of the proposed transferee along with the form of a proposed written Assignment and Assumption Agreement in which the Transferee expressly agrees to assume the rights and obligations of Developer under this Agreement with respect to those portion(s) of the Disposition Property that are being Transferred that arise after the effective date of the Transfer, and in which the Transferee agrees to assume or the Transferor remains responsible for performance of all obligations of Developer that arose prior to the effective date of the Transfer with respect to the rights and obligations being transferred.

11.2.1 Gound Lease Structure. The City acknowledges that Developer is considering a ground lease structure for the Developer's acquisition, financing, and Development of the Disposition Property, wherein a ground lessor will acquire the Disposition Property as fee owner and ground lease it to Developer to develop and operate the same (the "**Ground Lease Structure**"). The Ground Lease Structure shall be subject to City's review and approval in accordance with Section 11.2.2 provided that City's approval shall not be unreasonably withheld, conditioned, or delayed if the proposed transferee meets both of the Financial Requirement and the Experience Requirement, as defined below.

11.2.2 Request for Consent to Ground Lease Structure. At least sixty (60) days prior to the effective date of the proposed Transfer to effectuate the Ground Lease Structure, Developer shall request City's consent to the Transfer by delivering a notice to City together with:

(a) The name and address of the proposed transferee, who shall be the ground lessor in the Ground Lease Structure;

(b) The proposed effective date of the proposed Transfer;

(c) The proposed form of an Assignment and Assumption Agreement under which the proposed transferee agrees to fulfill all of Developer's material obligations under this Agreement following a Developer Default;

(d) Reasonably sufficient information and documentation, including references and examples of prior development projects, evidencing that the proposed transferee has a commercially reasonable amount of experience in the State of California in the ownership, operation, management and, if applicable, development of real estate assets of the use classes represented by the Project (the "**Experience Requirement**");

(e) Reasonably sufficient information and documentation, including financial statements, evidencing that the proposed transferee and/or the person or entity that controls the transferee (if such person or entity would be financially liable as part of the proposed

Transfer) has the financial standing and/or strength (taking into account all of the proposed transferee's other obligations and liabilities) to perform Developer's obligations under this Agreement (the "**Financial Requirement**").

11.3 Assignment and Assumption Agreement. No later than ten (10) business days after the date any Transfer (whether or not City approval is required) becomes effective, Developer shall deliver to City a fully executed original of an Assignment and Assumption Agreement. Upon the effective date of said Transfer, Developer shall be released from all obligations expressly assumed by the Transferee under the executed Assignment and Assumption Agreement.

12. GENERAL PROVISIONS.

12.1 Notices. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith ("**Notice**") shall be given in writing and directed to the City and Developer as follows:

If to the City:	City Clerk City of Stockton 425 N. El Dorado St, 1st Floor Stockton, CA 95202
with copies to:	City Manager City of Stockton 425 N. El Dorado St, 1st Floor Stockton, CA 95202
and:	City Attorney City of Stockton 425 N. El Dorado St, 1st Floor Stockton, CA 95202
If to Developer:	RBH Stockton OZ Project, LLC c/o RBH Group 89 Market Street, 8th Floor Newark, NJ 07102
with a copy to:	Hakeem, Ellis, Marengo & Ramirez Attn: Mike Hakeem 3414 Brookside Rd., Suite 100 Stockton, CA, 95219

Notices are deemed effective if delivered by certified mail, return receipt requested, or commercial courier, with delivery to be effective upon verification of receipt. Any Party may change its respective address for Notices by providing Notice of such change to the other Parties.

12.2 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party. Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future. Construction of Agreement. All Parties have been represented by counsel in the preparation and negotiation of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Agreement. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case any Party may terminate this Agreement by providing Notice thereof to the other Party. Time is of the Essence. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California. Extension of Time Limits. The time limits set forth in this Agreement may be extended by mutual consent in writing of the Parties in accordance with the provisions of this Agreement. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and the City. Entire Agreement. This Agreement (including all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement. City Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

12.13 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

12.14 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns, including Mortgagees. No other person shall have any right of action based upon any provision in this Agreement.

12.15 Fair Market Transaction. The parties agree that (i) Developer is purchasing the Disposition Property from the City in an arm's length transaction at its current fair market value, (ii) no public funds are being utilized to develop the Project, no City subsidy is being provided in connection with this Agreement, and Developer is not receiving any benefit hereunder that is paid for in whole or in part out of public funds, and (iii) this Agreement is not intended to be a contract for public works or improvements, nor is there any basis for such a determination under the terms hereof.

12.16 Standard for Consents and Approvals. In cases where the written consent or approval of a party is required hereunder and a standard of review and/or timeline for the granting or withholding of such consent or approval is not set forth, such consent or approval shall not be unreasonably withheld, conditioned or delayed except as indicated otherwise herein.

12.17 Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California, without reference to its choice of law provisions.

[Signature Page Follows]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement as of the Effective Date.

CITY:

CITY OF STOCKTON,
a chartered California municipal corporation

By: _____
Harry Black, City Manager
[Signature must be notarized]

ATTEST:

By: _____
Eliza R. Garza, City Clerk

APPROVED AS TO FORM:

By: _____
Lori M. Asuncion, City Attorney

DEVELOPER:

RBH STOCKTON OZ PROJECT, LLC

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____
[Signatures must be notarized]

EXHIBIT A

Disposition Property

EXHIBIT B

Park Property

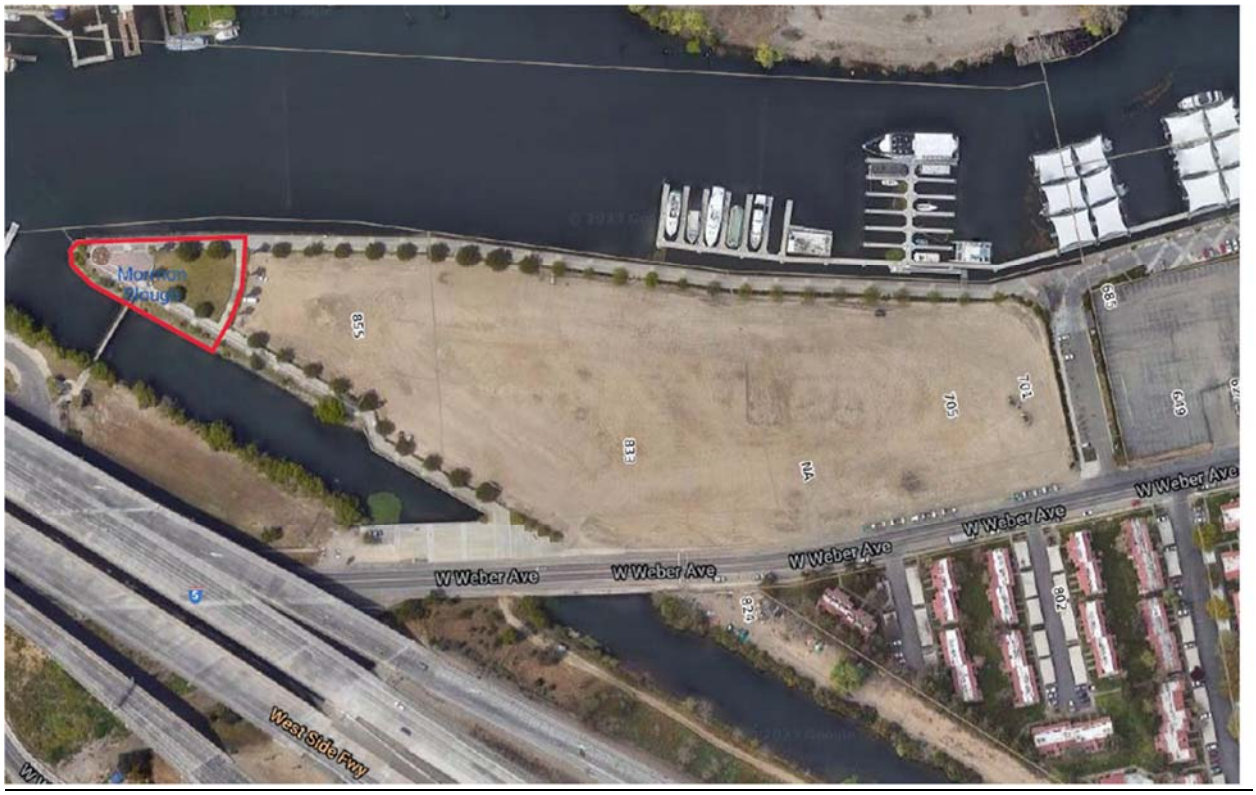

EXHIBIT C

City Facilities Property

EXHIBIT D

Grant Deed

RECORDING REQUESTED BY AND AFTER RECORDATION MAIL TO:

City of Stockton
City Clerk
425 N. El Dorado St, 1st Floor
Stockton, CA 95202

This document is exempt from the payment of a recording fee pursuant to Government Code §§ 6103, 27383

(Space Above This Line for Recorder's Use Only)

THE UNDERSIGNED GRANTOR DECLARES:
DOCUMENTARY TRANSFER TAX $ _____ CO. $ _____ CY.
___ COMPUTED ON FULL VALUE OF PROPERTY CONVEYED, OR
___ COMPUTED ON FULL VALUE LESS LIENS REMAINING AT TIME OF SALE
__X__CITY OF STOCKTON UNINCORPORATED___

GRANT DEED

- For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CITY OF STOCKTON, a chartered California municipal corporation ("**Grantor**"), hereby grants to RBH STOCKTON OZ PROJECT, LLC, a Delaware limited liability company ("**Grantee**"), the real property (the "**Property**") located in the City of Stockton, County of San Joaquin, California, more particularly described in Attachment No. 1 attached hereto and incorporated in this grant deed ("**Grant Deed**") by reference.

-

1. Covenants. Grantee expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that:

1.1 Grantee and all such successors and assigns and all persons claiming under or through it, shall develop the Property only with the Project and uses specified and in accordance with that certain Disposition and Development Agreement between Grantor and Grantee dated as of _____ ("**DDA**") as well as all other applicable permits, land use entitlements, or approvals issued by City. Capitalized terms used but not otherwise defined herein shall have the meanings provided in the DDA. City's issuance of a Certificate of Completion pursuant to Section 7.3 of the DDA shall constitute evidence of Grantee's satisfaction of this development covenant. City's issuance of a Certificate of Completion pursuant to Section 7.3 of the DDA shall constitute evidence of Grantee's Substantial Completion of the Project.

2. City Option to Repurchase, Reenter and Repossess. Until such time as [Phase 1][Phase 2] of the Project is Substantially Complete, Grantor shall have the right, in the event of certain

specified uncured defaults under the DDA, to repurchase, reenter and take possession of [Phase 1][Phase 2], as further provided in Section 9.3 of the DDA. Such right to repurchase, reenter and repossess shall be subordinate to and be limited by and shall not defeat, render invalid or limit: (a) any mortgage, deed of trust or other security instrument permitted by the DDA; or (b) any rights or interests provided in the DDA for the protection of the holder of such mortgages, deeds of trust or other security instruments.

3. Effect, Duration and Enforcement of Covenants.

It is intended and agreed that the covenants and agreements set forth in this Grant Deed shall be covenants running with the land and that they shall be, in any event and without regard to technical classification or designation, legal or otherwise, to the fullest extent permitted by law and equity, (i) binding for the benefit and in favor of Grantor, as beneficiary; and (ii) binding against Grantee, its successors and assigns to or of the Property. The agreements and covenants herein shall be binding on Grantee itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Property.

Grantor shall have the right, in the event of any and all of such covenants of which it is stated to be the beneficiary, to institute an action for injunction and/or specific enforcement to cure an alleged breach or violation of such covenants, subject to the paragraph below.

Grantee shall be entitled to written notice from Grantor and shall have the right to cure any alleged breach or violation of all or any of the covenants set forth in this Grant Deed; provided that Grantee shall cure such breach or violation within thirty (30) days following the date of written notice from Grantor, or in the case of a breach or violation not reasonably susceptible of cure within thirty (30) days, Grantee shall commence to cure such breach or violation within such thirty (30) day period and thereafter diligently to prosecute such cure to completion within a reasonable time.

4. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument encumbering the Property; provided, however, that any successor of Grantee to the Property (other than the Grantor in the event Grantor re-acquires title to the Property) shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. Amendments. Only the Grantor, its successors and assigns, and the Grantee and the successors and assigns of the Grantee in and to fee title to the Property shall have the right to consent and agree to changes or to eliminate in whole or in part any of the covenants contained in this Grant Deed. For purposes of this Section, successors and assigns of the Grantee shall be defined to include only those parties who hold all or any part of the Property in fee title, and shall not include a tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under deed of trust, or any other person or entity having an interest less than a fee in the Property and the Project.

6. Grantee's Acknowledgment. By its execution of this Grant Deed, Grantee has acknowledged and accepted the provisions hereof.

7. Counterparts. This Grant Deed may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

GRANTOR:

City of Stockton, a chartered California municipal corporation

Date: _____, 20__

By: *[form document – do not execute]*
Harry Black, City Manager
[SIGNATURE MUST BE NOTARIZED]

ATTEST:

_____
Eliza R. Garza, City Clerk

APPROVED AS TO FORM:

_____
Lori M. Asuncion, City Attorney

GRANTEE:

RBH STOCKTON OZ PROJECT, LLC, a Delaware limited liability company

Date: _____, 20__

By: *[form document – do not execute]*
Name: _____
[SIGNATURE MUST BE NOTARIZED]
Title: _____

Date: _____, 20__

By: *[form document – do not execute]*
Name: _____
[SIGNATURE MUST BE NOTARIZED]
Title: _____

EXHIBIT E

Insurance for Right of Access

Consultant 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 performance of the work hereunder by the Consultant, its agents, representatives, or employees.

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 (ISO CG 25 03 or 25 04) 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), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit 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 limit of no less than **$1,000,000** per accident for bodily injury or disease.

(Not required if consultant provides written verification it has no employees)

4. **Professional Liability/Errors and Omissions** insurance appropriate to the Developer's profession, with limit no less than **$1,000,000** per occurrence or claim, **$1,000,000** aggregate.

If the Developer maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Developer. 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 Contractor 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 Developer's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is 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 **Developer's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 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, or volunteers shall be excess of the Developer's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Developer's insurance coverage to the sole negligence of the Named Insured.

Umbrella or Excess Policy

The Developer may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Developer's primary and excess liability policies are exhausted.

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

Developer hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Developer may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Developer 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.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Developer to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds $25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Developer or its contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Developer to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

Claims Made Policies

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the 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 five (5) years after completion of the contract of 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 date, the Developer must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Developer shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer'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. 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 special circumstances.

Contractors and subcontractors

Developer shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and Developer shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work***.

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 special circumstances.

Certificate Holder Address

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

City of Stockton
Its Officers, Officials, Employees, and Volunteers
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

EXHIBIT F

Form of Affordable Housing Declaration

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Stockton
City Clerk
425 N. El Dorado St, 1st Floor
Stockton , CA 95202

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383

DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS

This DECLARATION OF AFFORDABLE HOUSING RESTRICTIONS ("Declaration") is made this _____ day of _____, 20__ by the CITY OF STOCKTON, a chartered California municipal corporation ("**City**" or "**Declarant**") with reference to the following facts:

RECITALS:

A. City owns that certain real property, legally described in Attachment No. 1 attached hereto and incorporated herein (the "**Property**").

B. On or about ____, City declared the Property to be surplus in accordance with the State Surplus Lands Act (the "**Act**"), as set forth in Government Code section 54220 *et seq*.

C. On or about ____, City issued a written notice of availability with respect to the Building Property pursuant to Section 54222 of the Act.

D. Following City's issuance of the notice of availability and prior to expiration of the 60-day offer period, City received no notices of interest from housing sponsors.

E. Prior to City's sale of the Property to a third party purchaser, the Act requires that City record certain covenants and restrictions to ensure that if the Property is ever developed with more than 10 residential units, not less than 15 percent of the total number of residential units shall be sold or rented at an affordable housing cost or affordable rent, as applicable, to lower income households.

G. City now desires to comply with the requirements of Section 54233 of the Act by recording this Declaration which shall run with the land and be binding upon City and its successors and assigns.

NOW THEREFORE, City declares that the Property is and shall be held, conveyed, encumbered, leased and improved subject to the covenants and restrictions set forth in this

Declaration, all of which are agreed to be for the purpose of ensuring compliance with the requirements of the Act and which shall run with the land, shall be binding on and inure to the benefit of City and all owners having or acquiring any right, title or interest in the Property and shall be binding on and inure to the benefit of the successors in interest of such parties. City further declares that it is the express intent that this Declaration satisfy the requirements of California Government Code section 54233.

DECLARATION:

RESTRICTION ON DEVELOPMENT OF SITE FOR HOUSING.

If ten (10) or more residential units are developed on the Property, not less than 15 percent of the total number of residential units developed on the property shall be sold or rented at affordable housing cost, as defined in Section 50052.5 of the California Health and Safety Code, or affordable rent, as defined in Section 50053 of the California Health and Safety Code, to lower income households, as defined in Section 50079.5 of the California Health and Safety Code. Rental units shall remain affordable to and occupied by lower income households for a period of 55 years for rental housing and 45 years for ownership housing. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of 65915 of the California Government Code. These requirements shall be covenants or restrictions running with the land and shall be enforceable against any owner who violates a covenant or restriction and each successor-in-interest who continues the violation by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5 of the California Government Code.

IN WITNESS WHEREOF, this Declaration is made on _____, 20__, by City.

CITY:

CITY OF STOCKTON, a
California municipal corporation

By: _____
Name: _____

ATTEST:

_____
Eliza R. Garza, City Clerk

APPROVED AS TO FORM:

_____
Lori M. Asuncion, City Attorney

EXHIBIT G

Insurance

Developer shall procure and maintain for the duration of the contract, *and for 5 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 Developer, his 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 (ISO) 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 (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability**: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **$2,000,000** 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. **Builder's Risk (Course of Construction)** insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

5. **Professional Liability** (Insurance appropriate to the Developer's profession), with limits no less than **$2,000,000** per occurrence or claim, and **$2,000,000** policy aggregate.

6. Surety Bonds as described below.

7. **Property insurance** against all risks of loss to the structure, at full replacement cost with no coinsurance penalty provision.

8. **Contractors Pollution Liability** applicable to the work being performed (if project involves environmental hazards), with a limit no less than **$2,000,000** per claim or occurrence and **$2,000,000** aggregate per policy period of one year.

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

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Developer to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds $25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Developer or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Developer to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

Other Insurance Provisions

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

1. **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 Developer 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 Developer. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **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.

2. For any claims related to this project, the **Developer's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 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, or volunteers shall be excess of the Developer's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Developer'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.

Builder's Risk (Course of Construction) Insurance
Developer may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City of Stockton as a loss payee as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City of Stockton, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City of Stockton's site.

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 five (5) years after completion of contract work.

3. If coverage is cancelled 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 Developer must purchase extended reporting period coverage for a minimum of five (5) 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.

Umbrella or Excess Policies
The Developer may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply

to a loss covered hereunder, shall be called upon to contribute to a loss until the Developer's primary and excess liability policies are exhausted.

Acceptability of Insurers
Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City of Stockton.

Waiver of Subrogation
Developer hereby agrees to waive rights of subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer 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 Developer, its employees, agents, contractors, and subcontractors.

Verification of Coverage
Developer shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause and **a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer'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. 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 special circumstances.

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

Duration of Coverage
CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work***.

Surety Bonds
Developer shall provide the following Surety Bonds:

1. Bid Bond

2. Performance Bond

3. Payment Bond

4. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. 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.

Certificate Holder Address

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

City of Stockton
Its Officers, Officials, Employees and Volunteers
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

EXHIBIT H

Form of Certificate of Completion

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Stockton
City Clerk
425 N. El Dorado St, 1st Floor
Stockton , CA 95202

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383

CERTIFICATE OF COMPLETION

- THIS CERTIFICATE OF COMPLETION ("**Certificate of Completion**") is made by the CITY OF STOCKTON, a municipal corporation ("**City**"), in favor of _____ ("**Developer**"), as of the date set forth below.

RECITALS

- A. City and Developer are parties to that certain Disposition and Development Agreement dated as of _____ ("**Agreement**") concerning property identified as San Joaquin Assessor Parcel Numbers [*to be updated in light of parcel map or LLA:* 145-270-06, 145-270-10, 145-190-03, and 145-270-09] (the "**Property**"). Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Agreement.

- B. Pursuant to the Agreement, City recorded an Affordable Housing Covenant dated _____, 20__, against the Property in the San Joaquin County Office of the Recorder-County Clerk as Instrument No. _____ ("**Affordable Housing Covenant**").

- C. Pursuant to Section 7.2 of the Agreement, City is required to furnish Developer or its successors, in form suitable for recordation, a Certificate of Completion upon Substantial Completion of [Phase 1][Phase 2] of the Project.

- D. City has determined that [Phase 1][Phase 2] of the Project is Substantially Complete.

- NOW, THEREFORE, the City hereby certifies as follows:

- 1. [Phase 1][Phase 2] of the Project is Substantially Complete as required under the Agreement.

- 2. All indemnity obligations contained in the Agreement that are applicable to the Property shall remain in effect and enforceable in accordance with the Agreement.

- 3. All terms, conditions and provisions contained in the Grant Deed from City to Developer recorded in the San Joaquin County Office of the Recorder-County Clerk as Instrument No. _____ and the Grant Deed from City to Developer recorded in the San Joaquin County Office of the Recorder-County Clerk as Instrument No. _____shall remain in effect and enforceable in accordance with their respective terms.

- 4. All terms, conditions and provisions contained in the Affordable Housing Covenant shall remain in effect and enforceable in accordance with its terms.

- 5. This Certificate of Completion shall not be deemed or construed to constitute evidence of compliance with, or satisfaction of, any obligation of Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to Developer in connection with the Project or any portion thereof. This Certificate of Completion is not a notice of completion as referred to in California Civil Code Section 3093.

- 6. Nothing contained in this instrument shall be deemed or construed to modify any provisions of the Agreement or any other document executed in connection therewith.

- IN WITNESS WHEREOF, City has executed and issued this Certificate of Completion as of the date set forth below.

-

CITY:

CITY OF STOCKTON, a chartered municipal corporation

-

Dated: _____, 20__

By: FORM – DO NOT SIGN

Name: -

Title: -

-

-

EXHIBIT I

Schedule of Performance

Ref.	**Action**	**Date**
§6.1	Opening of Escrow Developer shall open Escrow for the Conveyances by delivering a fully executed Agreement to Escrow Agent.	Five (5) days of the Effective Date.
§6.2	Deposit Developer shall deposit the Deposit with Escrow Holder.	Within three (3) business days of Opening of Escrow.
§6.4.2	Delivery of Preliminary Site Title Report Developer shall cause Escrow Holder to deliver to City and Developer the Preliminary Site Title Report together with copies of all documents relating to title exceptions shown in the Preliminary Title Report.	Within 30 days after the Opening of Escrow.
§6.4.2	Delivery of Title Objections Developer shall notify City of any exceptions to title as shown in the Title Report to which Developer disapproves.	Prior to expiration of the Title Review Period (60 days from receipt of Preliminary Site Title Report).
§6.4.3	City's Title Response City may notify Developer in writing whether City elects to remove the Title Objections.	Prior to expiration of City's Title Response Period (30 days after receipt of Developer's Title Objections).

Ref.	**Action**	**Date**
§6.4.4	Developer's Title Termination Developer may elect, by Notice to City, to terminate this Agreement if City elects or is deemed to have elected not to cause any Title Objections to be removed.	Within ten (10) days of receipt of City's Title Response or expiration of City's Title Response Period if no City's Title Response is provided.
§5.5	Feasibility Period Developer shall have the right to inspect the Property and approve the condition of the Property.	Commencing on the Effective Date and ending 60 days after the Remediation Approval is obtained.
§5.7	Delivery of Notice of Feasibility Approval	Prior to expiration of the Feasibility Period
	Commencement of Remediation Work City shall commence Remediation Work.	Within ninety (90) days of DTSC's approval of the Remedial Action Workplan.
	Completion of Remediation Work City shall complete the Remediation Work.	As Specified by DTSC-approved Remediation Plan.
	Approval of Remediation Work City shall obtain Remediation Approval.	Within ninety (90) days of completion of the Remediation Work.

Ref.	**Action**	**Date**
§6.9	Phase 1 Closing Date	Within thirty (30) days of satisfaction or waiver of the City Phase 1 Conditions Precedent and the Developer Phase 1 Conditions Precedent, but no later than three (3) years after the Effective Date ("**Phase 1 Outside Closing Date**").
§6.7.1	City's receipt and approval of Developer's budget for construction of the Project;	Six (6) months after Remediation Approval.
§6.7.1	City's receipt and approval of Developer's financing plan for construction of the Project;	Six (6) months after Remediation Approval
§6.7.1	Recordation of access and utilities easements over the City Facilities Property for the benefit of the Disposition Property;	Six (6) months after Remediation Approval
§6.7.1	Developer's receipt of all necessary discretionary land use entitlements, permits and approvals (e.g. use permit, general plan amendments, design review, subdivisions (including any subdivision parcel maps), resource agency permits etc.) to develop the Minimum Program for Phase 1	Six (6) months after Remediation Approval
§6.7.1	City's receipt and approval of acceptable evidence that loans have closed or will close at the Phase 1 Closing in amounts sufficient to design, develop and construct the portion of the Project on Phase 1.	Twelve (12) months after Remediation Approval
§6.7.1	City's receipt of an executed Phase 1 Construction Contract.	Twelve (12) months after Remediation Approval

Ref.	**Action**	**Date**
§6.7.1	City's receipt of complete application(s) and all fees for grading and building permits necessary for the portion of the Project on Phase 1, and City's determination that City is ready to issue such permits.	Twelve (12) months after Remediation Approval
§6.7.1	City's receipt of certificates of insurance, copies of insurance policies, or other acceptable evidence that Developer has obtained insurance satisfying the requirements set forth in Exhibit H.	Twelve (12) months after Remediation Approval
§6.5	Developer shall request a Title Update covering only Phase 1	Within a reasonable time in advance of Phase 1 Closing
§6.7.1	Developer's deposit of the Phase 1 Consideration or, if the Developer Contribution was made, the difference between the Phase 1 Consideration and the Developer Contribution. If the Developer Contribution exceeds the Phase 1 Consideration, this condition shall be deemed satisfied.	2 business days before the Phase 1 Closing Date.
§8.1	Developer shall provide a completion guaranty for Phase 1	Prior to Commencement of Construction of Infrastructure.
§8.1.1	Developer shall Commence Phase 1 Construction, inclusive of Infrastructure	Within three (3) months after the Phase 1 Closing Date.
§8.1.1	Developer shall complete piles/foundation for Phase 1 structures	Within four (4) months after the Commencement of Phase 1 Construction.

Ref.	**Action**	**Date**
§8.1.1	Developer shall complete superstructure for Phase 1 structures	Within twelve (12) months after the Commencement of Phase 1 Construction.
§8.1.1	Developer shall substantially complete exterior skin for Phase 1 structures	Within twenty (20) months after the Commencement of Phase 1 Construction.
§8.1.1	Developer shall achieve Substantial Completion of all Phase 1 improvements	Within twenty-eight (28) months after the Commencement of Phase 1 Construction.
§8.1.1	Developer shall Complete Construction of all Phase 1 Improvements, inclusive of Infrastructure	Within thirty (30) months after the Commencement of Phase 1 Construction.
§8.1.2	Developer shall provide Phase 2 initial financial model to City	Within one (1) year after the Phase 1 Completion of Construction.
§8.1.2	Developer shall commence Phase 2 design	Within twenty-two (22) months after the Phase 1 Completion of Construction.
§6.7.2	City's receipt and approval of acceptable evidence that loans have closed or will close at the Phase 2 Closing in amounts sufficient to design, develop and construct the portion of the Project on Phase 2	Within thirty (30) months after the Phase 1 Completion of Construction.

Ref.	**Action**	**Date**
§6.7.2	Developer's receipt of all necessary discretionary land use entitlements, permits and approvals (e.g. use permit, general plan amendments, site plan, design review, subdivisions (including any subdivision parcel maps), resource agency permits etc.) to develop the Minimum Program on Phase 2	Within thirty (30) months after the Phase 1 Completion of Construction.
§6.7.2	City's receipt of complete application(s) and all fees for all necessary grading and building permits for Phase 2, and City shall have issued or be ready to issue such permits	Within thirty-six (36) months after the Phase 1 Completion of Construction.
§6.7.2	City's receipt of certificates of insurance, copies of insurance policies, or other acceptable evidence that Developer has obtained insurance satisfying the requirements set forth in Exhibit H	Within thirty-six (36) months after the Phase 1 Completion of Construction.
§6.7.2	City's receipt of an executed Phase 2 Construction Contract	Within thirty-six (36) months after the Phase 1 Completion of Construction.
§6.7.2	Developer's deposit of the Phase 2 Consideration or, if the Developer Contribution was made, the difference between the Phase 2 Consideration and the Developer Contribution. If the Developer Contribution exceeds the Phase 2 Consideration, this condition shall be deemed satisfied	2 business days before the Phase 2 Closing Date
§6.10	Phase 2 Closing Date	Within thirty (30) days after satisfaction or waiver of the City Phase 2 Conditions Precedent and the Developer Phase 2 Conditions Precedent, but no later than six (6) years after the Phase 1 Closing Date

Ref.	**Action**	**Date**
§8.1	Developer shall provide a completion guaranty for Phase 2	Within thirty-six (36) months after the Phase 1 Completion of Construction.
§8.1.2	Developer shall Commence Construction of the first building on Phase 2	Within thirty-six (36) months after the Phase 1 Completion of Construction.
§8.1.2	Developer shall complete piles/foundation for Phase 2 structures	Within four (4) months after the Commencement of Phase 2 Construction.
§8.1.2	Developer shall complete superstructure for Phase 2 structures	Within twelve (12) months after the Commencement of Phase 2 Construction.
§8.1.2	Developer shall substantially complete exterior skin for Phase 1 structures	Within twenty (20) months after the Commencement of Phase 2 Construction.
§8.1.2	Developer shall achieve Substantial Completion of all Phase 2 improvements	Within twenty-eight (28) months after the Commencement of Phase 2 Construction.
§8.1	Developer shall Complete Construction of all Phase 2 Improvements	Within thirty (30) months after the Commencement of Phase 2 Construction.

Exhibit J

Form of License and Maintenance Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Stockton
City Clerk
425 N. El Dorado St, 1st Floor
Stockton, CA 95202

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383

LICENSE AND MAINTENANCE AGREEMENT

This LICENSE AND MAINTENANCE AGREEMENT ("**Agreement**") is made and entered into on _____, 20__ by and between the City of Stockton, a municipal corporation ("City") and RBH Stockton OZ Project, LLC, a Delaware limited liability company ("**Developer**").

RECITALS

A. On February ___, 2024, the City and Developer entered into a Disposition and Development Agreement ("**DDA**") whereby City agreed to convey to Developer approximately 9.12 acres of real property bounded by certain City-owned property and improvements adjacent to West Weber Avenue, Mormon Slough, the Stockton Downtown Marina, and the Stockton Channel located at 701-855 W. Weber Avenue and generally identified as San Joaquin Assessor Parcel Numbers 145-270-06 and 145-270-10, the unimproved portion of San Joaquin Assessor Parcel Number 145-190-03 and 145-270-09, and an unnumbered parcel consisting of right of way to be vacated by the City, all as more particularly described in Exhibit A (the "**Disposition Property**"). Developer intends to construct a mixed-use development on the Disposition Property known as "The Village at South Pointe," or such other name as may be mutually agreed upon by the Parties (the "**Project**"). The Project shall include mixed-income residential housing, retail space, community/civic space, and parking developed in two phases on the Disposition Property that, upon completion, shall include no fewer than 300 units (including independent living senior housing), 4,000 square feet of educational space, 16,000 sf of retail and/or community serving facility space within Phase 1 (as defined in the DDA), and 220 units of housing, including market rate and affordable housing, within Phase 2 (as defined in the DDA). Phase 1 and Phase 2 shall each include at least one (1) building (each, a "**Building**.")

B. The property identified as San Joaquin Assessor Parcel Number 145-190-03, more particularly described in Exhibit "B," attached hereto and incorporated herein by reference (the "**Park Property**") is improved with a park consisting of a seating area, decorative sculptures, and lighting facilities (the "**Improvements**").

C. The Disposition Property is surrounded by a paved walkway along the perimeter of the Disposition Property (the "**Promenade**"), which provides public access to the Park

Property and the waterfront. The City is retaining ownership of the Promenade, the Park Property and the Improvements (collectively, the "**City Property**").

D. Developer and City desire that City grant Developer a property right to enter upon the City Property for the purpose of maintaining, repairing and/or replacing the Improvements and the Promenade.

AGREEMENT

1. Maintenance and Use as a Park and Promenade. Developer shall be solely responsible for the following services with respect to the City Property (collectively, the "**Services**"): (a) light maintenance and repair of the landscaping within the City Property and (b) customary custodial and janitorial service to keep the City Property in a neat, clean, and orderly condition at all times. Specifically, landscape maintenance work shall include but not be limited to, regularly scheduled mowing, edging, shrub trimming, fertilizing, litter/trash collection, graffiti abatement, weed control, minor tree work, turf aeration (if needed), and disposal of the material generated. Custodial and janitorial service will generally include, but not be limited to, changing light bulbs in lighting fixtures, cleaning sculptures, regularly scheduled trash collection, emptying trash receptacles, washing site furnishings and structures such as tables and benches, and proper disposal of the material collected. Notwithstanding anything in this Agreement to the contrary, the Services shall exclude maintenance, repair, and replacement work on all of the following (collectively, the "**City Obligations**"): geotechnical, structural, mechanical, electrical, plumbing, drainage, landscaping (other than landscape maintenance work that is part of the Services), and other such systems, structures, equipment, and elements serving and/or incorporated into the City Property, including paved areas and walkways, sea walls and flood control facilities, railings and fences, lighting structures, furnishings and structures such as tables and benches, playground areas and equipment, trash receptacles, sculptures, and structures. The City Obligations shall not include repair of any damage caused by or related to the Project or the Services. If the City determines that there is any damage to the City Property resulting from or arising out of the Services or the construction or operation of the Project beyond reasonable wear and tear, then City may notify Developer of the same in writing and Developer shall repair any such damage in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City at no cost or expense to the City (**Developer Repair Obligations**"). Such Developer Repair Obligations shall survive termination of this License.

2. Term. The term of this Agreement shall be the Life of the Project. "**Life of the Project**" means the period beginning on the date that the Developer receives a temporary certificate of occupancy for any Building in Phase 1 (as defined in the DDA) and ending on such date as (a) all Buildings and other improvements constructed by Developer on the Disposition Property are substantially demolished in connection with Developer's abandonment of the Project during construction or construction and development of a new development project, or (b) a "**Major Casualty**" (as defined below) occurs, provided, if a Major Casualty occurs within the first fifty (50) years following the Effective Date, and if Developer and/or its mortgagees elect to reconstruct the Project or any portion thereof (at their expense) and such reconstruction occurs within five (5) years following the date of such Major Casualty, this Agreement shall remain in effect. As used herein "**Major Casualty**" means the Project is damaged or destroyed such that the cost of restoration or reconstruction exceeds fifty percent (50%) of the fair market

value of the Project immediately prior to the Major Casualty. If any of the events described in clause (a) of the first sentence of this Paragraph 2 occurs, or if a Major Casualty occurs and Developer and/or its mortgagees do not elect to reconstruct the Project or any portion thereof (at their expense) within five (5) years following the date of such Major Casualty, the Developer shall sign a termination notice at City's request in a form that City may record in the Official Records of the County of San Joaquin.

3. **License**. City grants Developer the non-exclusive license and right to enter (the "**License**") on the City Property for the purpose of performing the Services. Such License shall be irrevocable except as provided in Section 6 of this Agreement.

4. **City Right to Inspect and Repair**. City shall have the right to periodically inspect the Services performed on the City Property for the purpose of confirming Developer's compliance with this terms of this Agreement. Additionally, City and Developer shall meet periodically to discuss the scope of the Services and additional services that either party proposes for the City Property, and the parties shall endeavor to agree on a revised scope of the Services if appropriate, provided that nothing herein shall obligate Developer to increase the scope of Services if such adjustment would increase Developer's budget for the Services by more than three percent (3%) annually. City shall have the right, but not the obligation, to perform additional maintenance or repairs to the City Property above and beyond the Services at its sole cost and expense, provided that in doing so the City shall not interfere with Developer's performance of the Services. Notwithstanding anything in this Agreement to the contrary, the City shall be solely responsible, at its sole cost and expenses, for performing all City Obligations and shall notify Developer in advance of performing such work and endeavor to minimize disruption to the Disposition Property and Developer's improvements thereon.

5. **Default**. In the event of a default by Developer or Developer's successors or assigns, which default remains uncured thirty (30) days after notice is given of the default by City to Developer, City may (1) cause the Services and/or Developer's Repair Obligation to be done and charge the entire expense to Developer, including interest thereon at the maximum rate then chargeable by law, from the date of notice of said costs and expenses until paid and seek any and all legal relief available to recover said sums from the Developer in the event of non-payment; and/or (2) bring a legal action against the Developer seeking specific performance and an order compelling the Developer to perform its obligations hereunder and any other relief available to City at law or equity.

6. **Termination**. This Agreement may be terminated by the City in the event that there are three (3) or more Defaults by Developer in any calendar year. Otherwise, this Agreement may only be terminated as described in Paragraph 2 above.

7. **Hold Harmless**. To the fullest extent permitted by law, Developer shall hold harmless, defend and indemnify City of Stockton and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Developer's operations under this Agreement or any of Developer's acts or omissions in connection with Developer's obligations under this Agreement. This obligation is independent

of, and shall not in any way be limited by, the minimum insurance obligations contained in this Agreement. These obligations shall survive the expiration or termination of this Agreement.

8. **Developer's Liability Insurance**. Developer shall, during the life of this Agreement, take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California and will protect Developer or any Contractor or Subcontractor and anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages of bodily injury, sickness, disease, or death of its employees or any person other than its employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed under this Agreement, shall be as follows:

a. **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall Include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage (including Fire Legal Liability) Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an. Aggregate basis, $2,000,000 Aggregate limit (CO 0001).

b. **COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with combined single limits of liability of not less than $1,000,000 each occurrence. (CA 0001).

c. **WORKERS' COMPENSATION** as determined by state law.

Such liability insurance policies shall name City as an additional insured, by separate endorsements, and shall agree to defend and indemnify City against loss arising from operations performed under this Agreement and before permitting any contractor or subcontractor to perform work under this Agreement, Developer shall require such contractor or subcontractor to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by Developer as it may be applied to the contractor's or subcontractor's work.

Developer's Comprehensive General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or Umbrella Liability policy.

The foregoing policies shall contain a provision that coverages afforded under the policies will not be canceled or not renewed until at least 60 days prior written notice has been given to City. Certificates of insurance showing such coverages to be in force shall be made available to City upon request.

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

To City: City of Stockton
City Clerk
425 N. El Dorado Street
Stockton CA 95202

With a copy to: City of Stockton
City Attorney
425 N. El Dorado Street
Stockton CA 95202

To Developer: RBH Stockton OZ Project, LLC
c/o RBH Group
89 Market Street, 8th Floor
Newark, NJ 07102

With a copy to: Hakeem, Ellis, Marengo & Ramirez
Attn: Mike Hakeem
3414 Brookside Rd., Suite 100
Stockton, CA, 95219

10. **Entire Agreement**. This Agreement contains the entire agreement between the parties with regard to the matters set forth herein. There are no additional written or oral agreements or promises between the parties concerning these matters which are not expressly set forth in this Agreement. This Agreement may be amended or modified only by an agreement in writing executed in the same manner as this Agreement.

11. **Severability**. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

12. **Recording**. City shall cause this Agreement to be recorded in the Office of the Recorder of San Joaquin County, California.

13. **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

14. **Attorneys' Fees**. Should either party hereto bring suits in any court to enforce the terms hereof, any judgment awarded shall include court costs and reasonable attorneys' fees to the successful party.

15. **Venue and Governing Law**. Any legal action to enforce this Agreement shall be brought in the Superior Court for San Joaquin County, California, except for actions that include claims in which the Federal District Court for the Eastern District of the State of California has original jurisdiction, in which case the Eastern District of the State of California shall be the

proper venue. This Agreement shall be construed in accordance with the laws of the State of California, without reference to its choice of law provisions.

16. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Agreement. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

CITY OF STOCKTON

By: _____ Date: _____
Harry Black, City Manager

Attest:

By: _____
Eliza R. Garza, City Clerk

Approved As To Form

By: _____
Lori M. Asuncion, City Attorney

DEVELOPER

By: _____ Date: _____

Name: _____

Title: _____

By: _____ Date: _____

Name: _____

Title: _____

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

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

WITNESS my hand and official seal.

Signature:_____ (seal)

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

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

WITNESS my hand and official seal.

Signature:_____ (seal)

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

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

WITNESS my hand and official seal.

Signature:_____ (seal)