

CITY OF YUBA CITY  
STAFF REPORT

**Date:** April 21, 2020  
**To:** Honorable Mayor & Members of the City Council  
**From:** Administration  
**Presentation By:** Diana Langley, Interim City Manager/Public Works Director

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Summary

**Subject:** Third Amendment to the Disposition and Development Agreement for the Feather River Mill and Associated Properties (Noyan Properties, L.P., and H-NYC, LLC)

**Recommendation:**

- A. Adopt a Resolution of the City Council approving the third amendment to the Disposition and Development Agreement with H-NYC, LLC, and Noyan Properties, L.P., authorizing the sale and development of real property located at the southeast corner of Bridge and Shasta Streets (APN 52-342-023 & 52-502-008)
- B. As the City Council, authorize the City Manager to approve and sign on behalf of the City, Amendment No. 3 to the Disposition and Development Agreement with Noyan Properties, L.P. with regard to the property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed-use project (APN 52-324-023 & 52-502-008)
- C. As the Board of Directors of the Successor Agency, authorize the Executive Director to approve and sign on behalf of the Agency, Amendment No. 3 to the Disposition and Development Agreement with Noyan Properties, L.P. with regard to the property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed-use project (APN 52-324-023 & 52-502-008)

**Fiscal Impact:** None to approve the amendment.

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Purpose:

To advance development of the Feather River Mill property located at the southeast corner of Bridge Street and Shasta Street.

Background:

December 21, 2010 - City Redevelopment Agency ("Agency") enters into an Exclusive Negotiating Agreement (ENA) with the Mehmet Noyan Company for the sale and development of approximately 7.5 acres of Redevelopment Agency property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed-use project.

June 29, 2011 - Governor signs Assembly Bill 1X 26 and Assembly Bill 1X 27 which effectively abolishes Redevelopment and establishes a “winding down” process for the dissolution of all redevelopment agencies. An Oversight Board is created to oversee all aspects of the dissolution process. AB 1X26 directs the Successor Agency (City of Yuba City) to dispose of all assets and properties of the former RDA “expeditiously and in a manner aimed at maximizing value.”

June 7, 2012 – Oversight Board directs staff to finalize the terms and conditions of a Purchase and Sale Agreement with the Mehmet Noyan Company for the subject property that complies with Assembly Bill 1X 26 and Assembly Bill 1X 27.

June 27, 2012 – Governor approves AB 1484 which makes technical and substantive amendments to the (Redevelopment) Dissolution Act (aka AB 1X26). AB 1484 requires Successor Agencies to prepare a *Long-Range Property Management Plan* (LRPMP) which must address how all former RDA property will be disposed and include current appraisals and qualifications for highest and best use. The LRPMP supersedes the prior action of the Oversight Board relating to the disposition of former RDA property.

November 14, 2013 - Agency/City enters into an updated Memorandum of Understanding (MOU) with the developer. Developer action is effectively held in abeyance until State approval of the *Long-Range Property Management Plan* (LRPMP).

September 8, 2015 - State Department of Finance approves proposed LRPMP. Agency/City staff and developer proceed with determining the necessary work and estimated cost of environmental cleanup for the Feather Rill Mill site that is needed before any development can occur on the site.

June 2016 – State Central Valley Regional Water Quality Control Board approves Remediation Action Plan (RAP) for the site thereby allowing for environmental clean-up to occur.

October 2016 – City Council extends ENA with Noyan Properties to allow time for Staff and developer to negotiate a Development and Disposition Agreement (DDA)

June 2017 – City Council approves a DDA with Noyan Properties that includes the following key components:

- Property to be purchased for \$1 as determined by an appraisal completed by Seevers Jordan Ziegenmeyer and as approved in our Long-Range Property Management Plan
- Developer will have 180 days to close escrow on the property
- Noyan Properties must maintain a majority interest in the project until such time that the developer is relieved of the requirements contained in the DDA
- Developer will provide a performance bond in the amount of \$1,000,000 as collateral that will be released upon the property being clean to the satisfaction of the Central Valley Regional Water Quality Control Board
- Clean up on the property must commence within 120 days from the close of escrow
- The Developer will ensure the projects meet the City’s Design Guidelines and Central City Specific Plan requirements

January 2018 – City Council approves Amendment No. 1 to the DDA which changed the date for closing on the property from January 26, 2018 to July 20, 2018.

April 2018 – State Central Valley Regional Water Quality Control Board concurs with Remedial Design/Remedial Action Work Plan

November 2019 – City Council approves Amendment No. 2 to the DDA which changed the date for closing on the property from July 20, 2018 to November 5, 2020.

**Analysis:**

Mr. Mehmet Noyan of Noyan Properties has been a long-time partner with the City on this project and has made significant progress since the execution of Amendment No. 2. Hilbers, Inc., a local contractor, is assisting in a project management role and have hired a contractor to perform the remediation work. Mr. Noyan has acquired a loan through a local bank for the remediation work, and contacted Placer Title Company to begin the title transfer process.

In discussions with Mr. Noyan over the past few weeks, a few items have been identified that Mr. Noyan would like to request to address through an amendment to the DDA. Those items include:

- Assign DDA to a Successor Developer
  - Noyan Properties, L.P., the Original Developer, is assigning the DDA to a Successor Developer, H-NYC, LLC, a California limited liability company whose members include Noyan Properties and Hilbers Jones Properties, LP. This transfer is permitted under Section 304.3 of the DDA.
- Changing the Title Company from First American Title Company to Placer Title Company
  - Mr. Noyan has worked extensively with Placer Title Company on former redevelopment parcels and has a comfort level with their knowledge of the process. City staff have worked with both title companies and have no exceptions to using either company.
- Remove the bonding requirement
  - Section 213 of the DDA requires the Developer to procure and provide City with a fully prepaid surety bond to guarantee and assure the prompt and faithful performance of Developer's obligation to complete the remediation of the site. Mr. Noyan has requested to remove the bond requirement with the justification that he has been a long-time partner with the City on this project, he is working with a reputable local contractor to manage the work, and has acquired a loan for the full cost of the remediation work. In addition, the cost of a bond is just under \$20,000. He would prefer to redirect those funds toward the project.
- Address the deed configuration
  - There are several options on how the property is transferred to the Mehmet Noyan Company. The Amendment better spells out the property transfer.
- Add a Contract Manager with certain authority to provide flexibility as appropriate
  - To add flexibility and expedite minor changes to the DDA, staff is recommending adding a new section 611 that states, "The City Manager, or his/her designee, shall in their sole discretion, have the authority to approve any extensions, approvals, waiver or other non-material amendments on behalf of City. Any such extensions, approvals, waivers or non-material amendments must be in writing executed by the City Manager or his/her designee."
  - Add similar language for the authority of the Executive Director of the Successor Agency to do the same.
- Updated Schedule of Performance
  - Revise Attachment 3 to the DDA to reflect an updated schedule of performance.

**Fiscal Impact:**

The project includes the sale of approximately 7.5 acres of Agency property for the appraised value of \$1.00.

**Alternatives:**

Do not approve Amendment No. 3 of the Disposition and development Agreement with Noyan Properties.

**Recommendation:**

- A. Adopt a resolution of the City Council approving the third amendment to the Disposition and Development Agreement with H-NYC, LLC, and Noyan Properties, L.P., authorizing the sale and development of real property located at the southeast corner of Bridge and Shasta Streets (APN 52-342-023 & 52-502-008)
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**Attachments:**

- 1. Development and Disposition Agreement
- 2. DDA Amendment No. 1
- 3. DDA Amendment No. 2
- 4. DDA Amendment No. 3
- 5. Resolution

**Prepared and Submitted By:**

*/s/ Diana Langley*

Diana Langley  
Interim City Manager/Public Works Director

Reviewed by:

Finance

SM

City Attorney

SLC by email

# ATTACHMENT 1

**DISPOSITION AND DEVELOPMENT AGREEMENT**

**By and Between  
CITY OF YUBA CITY**

**and**

**NOYAN PROPERTIES, L.P.**

**Consented And Agreed To By The  
SUCCESSOR AGENCY TO THE  
YUBA CITY REDEVELOPMENT AGENCY**

Feather River Mills Project

## TABLE OF CONTENTS

	Page
100. SUBJECT OF AGREEMENT .....	1
101. Purpose of Agreement .....	1
102. Background .....	1
103. Prior Agreements .....	1
104. The Site .....	2
105. Parties.....	2
105.1 The City .....	2
105.2 The Developer.....	2
106. Deposit .....	3
200. DISPOSITION OF THE SITE .....	3
201. Sale and Purchase .....	3
202. Escrow .....	3
202.1 Opening of Escrow .....	3
202.2 Joint Escrow Instructions.....	3
202.3 Authorization of Escrow Agent; Liability .....	3
202.4 Deposits into Escrow .....	3
202.5 Preconditions to Close of Escrow .....	5
202.6 Close of Escrow .....	5
202.7 Notice to Parties.....	5
202.8 Broker Fees .....	6
203. Delivery of Possession.....	6
204. Conditions Precedent to Close Escrow .....	6
204.1 City Conditions .....	6
204.2 Developer Conditions .....	7
205. Pre-Closing Termination of Agreement .....	7
205.1 Termination for Failure of Certain Conditions .....	7
205.2 Liquidated Damages .....	7
206. Form of Deed .....	8
207. Condition of Title.....	8

208.	Time for and Place of Delivery of Deed.....	8
209.	Payment of the Purchase Price and Recordation of Deed.....	8
210.	Title Insurance .....	9
211.	Taxes and Assessments.....	9
212.	Conveyance Free of Possession.....	9
213.	Inspections; Condition of the Site.....	9
	213.1 Inspections .....	9
	213.2 "As Is" .....	10
	213.3 Developer Indemnity .....	10
	213.4 Definitions .....	11
	213.5 Materiality.....	11
214.	Zoning of the Site .....	11
215.	Right of Access.....	12
300.	DEVELOPMENT OF THE SITE.....	12
301.	Development of the Site by Developer .....	12
	301.1 Scope of Development.....	12
	301.2 Basic Concept Drawings.....	12
	301.3 Construction Plans, Drawings and Related Documents .....	12
	301.4 City Approval of Plans, Drawings and Related Documents.....	13
	301.5 Cost of Construction .....	14
	301.6 Developer Fees .....	14
	301.7 Construction Schedule .....	14
	301.8 Bodily Injury, Property Damage and Workers' Compensation Insurance .....	14
	301.9 City and Other Governmental Agency Permits .....	14
	301.10 Rights of Access .....	15
	301.11 Local, State and Federal Laws.....	15
	301.12 Antidiscrimination During Construction .....	15
302.	Taxes, Assessments, Encumbrances and Liens .....	15
303.	Property Tax Exemption Prohibited .....	15
304.	Assignment or Transfer of Property; Assignment of Agreement .....	15
	304.1 Assignment or Transfer of Property .....	16
	304.2 Assignment of Agreement .....	16



305.	Security Financing; Rights of Holders.....	16
305.1	Mortgages, Deeds of Trust, Sales and Lease-Backs or Other Financing .....	16
305.2	Holder Not Obligated to Construct Improvements.....	17
305.3	Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure.....	17
305.4	Failure of Holder to Complete Project.....	18
305.5	Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default .....	18
306.	Right of the City to Satisfy Other Liens on the Site After Title Passes.....	18
307.	Certificate of Completion .....	19
307.1	Issuance of Certificate .....	19
307.2	Liability Post-Issuance of Certificate.....	19
307.3	Delay in Issuance of Certificate.....	19
307.4	Representation of Certificate .....	19
400.	USE OF THE SITE.....	19
401.	Uses.....	19
402.	Obligation to Refrain From Discrimination.....	20
403.	Form of Nondiscrimination and Nonsegregation Clauses .....	20
404.	Effect and Duration of Covenants.....	21
500.	DEFAULTS, REMEDIES AND TERMINATION.....	21
501.	Defaults – General .....	21
501.1	Pre-Closing Default .....	21
501.2	Post-Closing Default.....	21
502.	Legal Actions.....	22
502.1	Institution of Legal Actions .....	22
502.2	Applicable Law; Interpretation .....	22
502.3	Fair Dealings; Ambiguity of Agreement .....	22
502.4	Acceptance of Service of Process .....	22
503.	Rights and Remedies are Cumulative .....	22
504.	Option to Repurchase, Reenter and Repossess .....	22
504.1	Right to Repurchase.....	23
504.2	Subordination of Repurchase .....	23

504.3	Repurchase Option Payment.....	24
505.	Power of Termination .....	24
600.	GENERAL PROVISIONS .....	27
601.	Notices, Demands and Communications Between the Parties .....	27
602.	Conflicts of Interest .....	27
603.	Nonliability of City Officials and Employees .....	27
604.	Casualties; Enforced Delay.....	27
605.	Extensions.....	27
606.	Plans and Data .....	27
607.	Attorneys' Fees.....	28
608.	Submission of Documents to the City for Approval.....	28
609.	Amendments to this Agreement .....	28
610.	Entire Agreement; Waivers and Amendments .....	28
610.1	Entire Agreement.....	28
610.2	Integration of Agreement.....	28
610.3	Waiver; Amendments .....	28
700.	TIME FOR ACCEPTANCE OF AGREEMENT BY CITY .....	29
701.	Acceptance by City; Effective Date.....	29

## **Attachments**

Attachment No. 1	Map of the Site
Attachment No. 2	Legal Description of the Site
Attachment No. 3	Schedule of Performance
Attachment No. 4	Scope of Development
Attachment No. 5	Form of Grant Deed

## DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AGREEMENT (this "Agreement") is entered into as of July 25, 2017 (the "Effective Date"), by and between the CITY OF YUBA CITY, a municipal corporation (the "City"), and NOYAN PROPERTIES, L.P, a California limited partnership (the "Developer"). The City and Developer are the parties (the "Parties") to this Agreement, which is approved, consented and agreed to by the SUCCESSOR AGENCY TO THE YUBA CITY REDEVELOPMENT AGENCY (the "Successor Agency") by the Consent and Agreement of the Successor Agency attached hereto following the signature page of the Parties and made a part hereof by this reference.

The City and Developer agree as follows:

### 100. SUBJECT OF AGREEMENT

101. Purpose of Agreement. The purpose of this Agreement is to effectuate the adopted plans and policies of the City of Yuba City, by providing for the disposition and development of certain real property as more particularly defined in Section 104 of this Agreement (the "Site"). This Agreement provides the terms and conditions for the disposition of the Site to the Developer for the purpose of developing a mixed-use commercial project, which is currently anticipated to include a hotel and related improvements as more particularly described below (the "Project"). The development of the Site to be undertaken by Developer pursuant to this Agreement is more specifically described in the Scope of Development (**Attachment No. 4**). The development of the Site and the fulfillment generally of this Agreement are in the vital and best interests of the City, and the health, safety, and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements. The Developer acknowledges and understands that the Site will be conveyed to the Developer for development in accordance with the terms and conditions of this Agreement, and not for speculation in undeveloped land.

102. Background. Pursuant to Assembly Bill 1X 26, enacted in June 2011, and as modified by the Supreme Court of the State of California in the matter of *California Redevelopment Association, et al. v. Ana Matosantos, et al*, Case No. S194861, and further modified by Assembly Bill 1484, enacted in June 2012, and other subsequent legislation (collectively, the "Dissolution Act"), the Yuba City Redevelopment Agency ("Redevelopment Agency") was dissolved, and pursuant to Health & Safety Code Section 34173, the City of Yuba City elected to serve as the successor agency to the dissolved Redevelopment Agency. Pursuant to Health and Safety Code Section 34173(g), the Successor Agency is a separate legal entity from the City.

Pursuant to Health and Safety Code Section 34191.5, the Successor Agency prepared a Long-Range Property Management Plan ("LRPMP") that addresses disposition of the real property owned by the former Redevelopment Agency. The LRPMP was approved by Resolution of the Oversight Board to the Successor Agency (the "Oversight Board"), a seven-member board established pursuant to Health and Safety Code Section 34179. The State

Department of Finance (“DOF”) approved the LRPMP by letter dated September 8, 2015. The LRPMP provides that, pursuant to Health & Safety Code Section 34191.5(c)(2), the Site will be sold for development of a mixed-use project.

103. Prior Agreements. On December 21, 2010, the Redevelopment Agency, prior to its dissolution, entered into an Exclusive Negotiating Agreement (the “2010 ENA”) with the Mehmet Noyan Company for the sale and development of a mixed use project on the Site. On June 7, 2012, the Oversight Board directed the Successor Agency to finalize the terms and conditions of a Purchase and Sale Agreement with Mehmet Noyan Company. On June 27, 2012, AB 1484 was adopted that made changes to the Dissolution Act requiring successor agencies to prepare a long range property management plan to address how the property of the former Redevelopment Agency will be disposed. That action superseded the prior action of the Oversight Board relating to a Purchase and Sale Agreement. On November 14, 2013, the City entered into a Memorandum of Understanding (the “2013 MOU”), effectively extending the time for preparation of a disposition agreement until the LRPMP was approved by DOF. Following approval of the final LRPMP by DOF, the City, Successor Agency and Developer entered into a Memorandum of Understanding Agreement (the “2016 MOU”), dated October 18, 2016, to provide a time period for the parties to negotiate diligently to prepare a Disposition and Development Agreement to be considered for execution by the parties for the sale of the Site to the Developer and development of a mixed-use project. This Agreement is the result of the negotiations of the parties under the 2016 MOU, and upon execution of this Agreement, the 2016 MOU shall be deemed terminated, and shall have no further force and effect.

104. The Site. The Site consists of two parcels of land, (a) approximately 285,753 square feet located generally at 400 Bridge Street, at the intersection of Bridge Street and Shasta Street (APN 52-324-023); and (b) the adjacent approximately 42,688 square feet of land located generally at 510 Boyd Street (APN 52-502-008). The Site is shown on the Map of the Site (**Attachment No. 1**) and is more particularly described in the Legal Description of the Site (**Attachment No. 2**). The Site is a contaminated, vacant site, owned by the former Redevelopment Agency, and is currently held in the Community Redevelopment Property Trust Fund, administered by the Successor Agency pursuant to Health and Safety Code Section 34191.5. The Successor Agency will convey the Site to the City prior to or concurrently with the close of escrow for conveyance of the Site to the Developer for development as set forth herein.

105. Parties.

105.1 The City. The City is a municipal corporation. The office of the City is located at 1201 Civic Center Boulevard, Yuba City, California 95993. “City” as used in this Agreement includes the City of Yuba City and any assignee of or successor to its rights, powers and responsibilities.

105.2 The Developer. The Developer is Noyan Properties, L.P., a California limited partnership. The managing partner of Developer is Mehmet Noyan. The principal office of the Developer is located at 685 West Alluvial Avenue, Suite 101, Fresno, CA 93711. “Developer” as used in this Agreement includes Noyan Properties, L.P., and any permitted nominee, assignee or successor in interest as herein provided. The qualifications and identity of

the Developer are of particular concern to the City, and it is because of such qualifications and concerns that the City has entered into this Agreement with the Developer. No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth in Sections 304 and 305 of this Agreement. This Agreement may be terminated by the City if there is any significant change (voluntary or involuntary) in the management or control of the Developer prior to the completion of development of the Site as evidenced by the issuance of a Certificate of Completion (as hereinafter defined) therefor.

106. Deposit. Prior to execution of this Agreement by the City, Developer previously submitted a Ten Thousand Dollar (\$10,000.00) deposit to the City pursuant to the terms and conditions of the 2016 MOU. Such deposit, or any portion thereof still held by the City, shall be retained by the City and shall be credited toward the Deposit required pursuant to this Agreement. Upon the Close of Escrow (as hereinafter defined), the amount of the Deposit then held by the City shall be returned to the Developer. If this Agreement is terminated prior to the Close of Escrow, the Deposit shall be returned to the Developer or retained by the City as provided in Section 205 hereof

## **200. DISPOSITION OF THE SITE**

201. Sale and Purchase. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the City agrees to sell, and the Developer agrees to purchase for development, the Site for ONE DOLLAR (\$1.00) (the "Purchase Price"). Because of the existing contamination on the Site, the Purchase Price constitutes the fair market value of the Site as determined by Bender Rosenthal, Inc., an MAI certified appraiser, as set forth in that certain Appraisal of Contaminated Commercial Land dated January 28, 2015 (the "Appraisal").

### 202. Escrow.

202.1 Opening of Escrow. The City agrees to open an escrow within five days of the execution of this Agreement by the City (the "Escrow") with First American Title Company, at 900 Tharp Road, Yuba City CA 95993, Attn: Ginger Harris (the "Escrow Agent"), within the time established in the Schedule of Performance (**Attachment No. 3**) (the "Schedule of Performance") for the purpose of conveying fee title to the Site to the Developer.

202.2 Joint Escrow Instructions. This Agreement constitutes the joint escrow instructions (the "Escrow Instructions") of the City and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of Escrow as set forth in the Schedule of Performance. The City and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. Any amendment of, or supplement to, these Escrow Instructions shall be in writing and signed by both the City and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

202.3 Authorization of Escrow Agent; Liability. The Escrow Agent hereby is empowered to act under this Agreement and shall carry out its duties as Escrow Agent, hereunder, upon indicating its acceptance of the provisions of this Section 202 in writing,

delivered to the City and to the Developer within five (5) days after the opening of the Escrow. The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 202 to 211, both inclusive, of this Agreement.

202.4 Deposits into Escrow.

A. Developer Funds. The Developer hereby agrees to deposit the following funds (the "Developer Funds") into the Escrow on or before the respective deposit date set forth for each item on the Schedule of Performance (as used herein, each date for performance of a respective obligation under the Schedule of Performance shall be individually referred to as, a "Scheduled Performance Date"):

1. The Purchase Price for the Site in accordance with the provisions of Section 209; and
2. The following fees, charges and costs (collectively, the "Developer Closing Costs"):
  - (a) one-half of the escrow fees;
  - (b) recording fees;
  - (c) any costs associated with the Title Policy (as hereinafter defined) which are to be paid by the Developer as set forth in Section 210 hereof; and
  - (d) an amount equal to any ad valorem tax associated with the Site, for any period of time after the Close of Escrow.

B. City Funds. The City hereby agrees to deposit the following funds (the "City Funds") into the Escrow on or before each item's respective Scheduled Performance Date:

1. The following fees, charges and costs (collectively, the "City Closing Costs"):
  - (a) one-half of the escrow fees;
  - (b) cost of drawing the deed;
  - (c) any costs associated with the Title Policy (as hereinafter defined) which are to be paid by the City as set forth in Section 210 hereof;
  - (d) notary fees, if any;
  - (e) an amount equal to the ad valorem taxes, if any, associated with the Site for any time prior to the Close of Escrow; and

(f) any state, county or city documentary transfer tax or fee.

The City shall also provide a written certification to the Escrow Agent of the amount of the Deposit Credit under Section 106 hereof, which is to be applied as a credit against the Purchase Price. All funds received in the Escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a thirty (30) day month.

C. City Documents. The City hereby agrees to deposit into the Escrow a fully executed grant deed in the form shown on **Attachment No. 5**, in recordable form, conveying to the Developer fee title to the Site in accordance with this Agreement (the "Deed") on or before the respective Scheduled Performance Date.

202.5 Preconditions to Close of Escrow. The Escrow Agent must satisfy the following conditions precedent to Close the Escrow:

A. The Escrow Agent has received written notice from the City and Developer confirming that all other conditions precedent to Close the Escrow have been satisfied outside of the Escrow, including the conditions set forth in Section 204;

B. The Escrow Agent holds the Deed duly executed by the City and appropriate information has been inserted into all blanks, the Deed is in recordable form, and the Escrow Agent has confirmed that the legal description for the Site attached to the Deed is correct;

C. The Title Company (as hereinafter defined) is irrevocably committed to issuing the Title Policy in accordance with Section 210 to the Developer.

202.6 Close of Escrow. Upon satisfaction of all of the conditions precedent to the Close of Escrow set forth above, the Escrow Agent is authorized and instructed to "Close the Escrow" as set forth below (the "Close of Escrow"):

A. Record the Deed in the Official Records of Sutter County in a manner which will enable the Title Company (as defined in Section 210) to issue the Title Policy;

B. Retain from the Developer Funds and the City Funds an amount sufficient to pay the Developer Closing Costs and City Closing Costs;

C. Deliver the Title Policy to the Developer, with a copy to the City;

D. Remit the Purchase Price to the City; and



E. Deliver to the City and the Developer at the addresses shown in Section 105 within five (5) business days of the Close of Escrow a conformed copy of the recorded Deed showing the recording information.

202.7 Notice to Parties. All communications from the Escrow Agent to the City or the Developer shall be directed to the addresses and in the manner established in Section 601 of this Agreement for notices, demands and communications between the City and the Developer.

202.8 Broker Fees. The City represents that it has not engaged any broker, agent or finder in connection with this transaction. The City shall not be liable for any real estate commissions or brokerage fees that may arise from the disposition of the Site pursuant to this Agreement, and Developer shall indemnify the City against any claims for real estate commissions or brokerage fees arising from the disposition of the Site pursuant to this Agreement.

203. Delivery of Possession. Possession of the Site shall be delivered to the Developer concurrently with the recording of the Deed, except that limited access may be permitted before conveyance of title as permitted in Section 215 of this Agreement. The Developer shall accept title and possession to the Site upon recordation of the Deed.

204. Conditions Precedent to Close Escrow.

204.1 City Conditions. The Close of Escrow is subject to the fulfillment, or waiver by the City, of each of the conditions precedent described below, which are solely for the benefit of the City and which shall be fulfilled or waived on or before each item's respective Scheduled Performance Date:

- A. The Developer shall not be in default under this Agreement.
- B. In accordance with Section 213 of this Agreement, the Developer shall provide evidence satisfactory to the City that Developer has secured a performance bond to ensure completion of the remediation of the Site.
- C. There shall be no litigation pending with respect to this Agreement or any City approvals related to the development of the Site as set forth herein, the outcome of which could materially interfere with the development of the Site as set forth herein.
- D. The Developer shall have obtained all permits and approvals required to commence the Remediation of the Site as set forth herein.
- E. The Developer shall have obtained a commitment, in a form reasonably satisfactory to the City, from a hotel franchisor to construct a hotel on the Site, consistent with the Scope of Development.

F. The Developer shall have deposited into escrow all funds required pursuant to Section 202.4(A) of this Agreement and completed all other acts to be completed by Developer for Close of Escrow hereunder.

204.2 Developer Conditions. The Close of Escrow is subject to the fulfillment, or waiver by the Developer, of each of the conditions precedent described below, which are solely for the benefit of the Developer and which shall be fulfilled or waived on or before each item's respective Scheduled Performance Date:

A. Developer's approval of the condition of title pursuant to Sections 207 and 212.

B. Developer's approval of the condition of the Site pursuant to Sections 212 and 213.

C. The Developer shall have obtained all permits and approvals required to commence the Remediation of the Site as set forth herein.

D. The City shall have completed all acts to be completed by City for Close of Escrow hereunder.

E. The Title Company shall have committed to issue to Developer the Title Policy pursuant to Section 210.


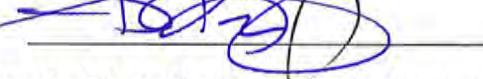
205. Pre-Closing Termination of Agreement.

205.1 Termination for Failure of Certain Conditions. In the event that, prior to the Closing Date, there is a failure to satisfy one or more conditions described in Section 204.1 or 204.2, that is not waived by the benefited party, the party for whose benefit the condition is established may terminate this Agreement by written notice to the other party. In the event of such a termination pursuant to Section 204.1(G) or 204.2, the City shall return the Deposit to the Developer and neither party shall have any further rights or liabilities to the other under this Agreement.

205.2 Liquidated Damages. IF THIS AGREEMENT IS TERMINATED BY THE CITY PRIOR TO THE CLOSE OF ESCROW BASED ON THE FAILURE OF THE DEVELOPER TO SATISFY ANY OF THE CONDITIONS SET FORTH IN SECTION 204.1(A)-(F) AND AFTER THE DEVELOPER HAS BEEN GIVEN WRITTEN NOTICE OF THE FAILURE FROM THE CITY AND A REASONABLE OPPORTUNITY TO CURE SAID FAILURE WHICH SHALL NOT EXCEED THIRTY (30) DAYS FROM THE RECEIPT OF NOTICE BY DEVELOPER, THE DEPOSIT MAY BE RETAINED BY THE CITY AS LIQUIDATED DAMAGES AND AS ITS PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER. IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS, MAKING IT NECESSARY FOR THE CITY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT SUCH SITE WOULD BE REDEVELOPED UNDER THE TERMS OF THIS

AGREEMENT, THEN THE DAMAGES SUFFERED BY THE CITY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION THAT SUCH PARTY WOULD PAY FOR THE SITE; THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE; OF INTERESTED PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM THE COMMUNITY; AND THE FAILURE OF THE CITY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE CITY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE AMOUNT OF THE DEPOSIT HELD BY THE CITY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE AMOUNT OF SUCH DEPOSIT SHALL BE PAID TO THE CITY UPON ANY SUCH OCCURRENCE AS THE TOTAL OF ALL LIQUIDATED DAMAGES FOR ANY AND ALL SUCH DEFAULTS AND NOT AS A PENALTY. IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE CITY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW.

THE DEVELOPER AND THE CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES (HERE):

By:   
By: 

206. Form of Deed. The City shall convey the Site to the Developer in the condition provided in Section 207 of this Agreement by a Deed in the form set forth in **Attachment No. 5.**

207. Condition of Title. On or before the respective Scheduled Performance Date, the City shall submit a preliminary title report for the Site to the Developer for approval, together with legible copies of all documents referenced therein. The Developer shall approve or disapprove any exceptions to title, in writing to the City, within fifteen (15) business days from the time of receipt of the preliminary title report. Failure by the Developer to either approve or disapprove the exceptions to title within such time shall be deemed an approval. If any condition of title is not acceptable to the Developer, the City shall have thirty (30) days to eliminate such exceptions from title. If the City is unable to eliminate any disapproved exceptions to title, the Developer may accept the Site subject to such exceptions, or terminate this Agreement pursuant to Section 205.1.

208. Time for and Place of Delivery of Deed. Subject to any mutually agreed upon extensions of time, the City shall deposit the Deed into the Escrow on or before the respective Scheduled Performance Date.

209. Payment of the Purchase Price and Recordation of Deed. The Developer shall deposit the Purchase Price, less the Deposit Credit under Section 106 hereof and other sums

required hereunder into the Escrow on or before the respective Scheduled Performance Date. Upon the Close of Escrow, the Escrow Agent shall file the Deed for recordation among the land records in the Office of the County Recorder of Sutter County, deliver the Purchase Price, less the Deposit Credit, and other required sums to the City, and deliver to the Developer the Title Policy.

**210. Title Insurance.** Concurrently with recordation of the Deed, the Escrow Agent shall provide and deliver to the Developer a CLTA Standard Coverage Owner's Title Insurance Policy (the "Title Policy") in the amount of the Purchase Price, issued by First American Title Company (the "Title Company"), insuring that title to the Site is vested in the Developer in the condition required under Section 207; provided, however, the Developer may, at its option, request an ALTA Extended Coverage Title Insurance Policy. The City shall pay for that portion of the premium for the Title Policy that would be required to obtain a CLTA Standard Coverage Owner's Title Insurance Policy (the "CLTA premium"), and the Developer shall pay for that portion of the premium for the Title Policy in excess of the CLTA premium. The Title Company shall provide the City with a copy of the Title Policy.

**211. Taxes and Assessments.** Ad valorem taxes and assessments on the Site, if any, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to the Close of Escrow shall be borne by the City. All such ad valorem taxes and assessments levied or imposed for a period commencing after the Close of Escrow shall be borne by the Developer.

**212. Conveyance Free of Possession.** The Site is vacant land and shall be conveyed free of any possession or right of possession by any person except that of the Developer and any right to possession approved by the Developer in accordance with Section 207.

**213. Performance Bond.** On or before the Close of Escrow, Developer shall procure and provide City with a fully prepaid surety bond to guarantee and assure the prompt and faithful performance of Developer's obligations to complete the Remediation of the Site as described in Section 214.3 of this Agreement. Such bond shall be executed by a surety licensed to transact business in the State of California, shall name City as obligee, shall provide at least thirty (30) calendar days prior notice of any cancellation, and shall be in an amount equal to 110% of the estimated cost of completion of the Remediation of the Site, as mutually determined by the City and Developer. The form of the bond and the surety are subject to the approval of Landlord's legal counsel, and shall remain in effect until the Remediation as set forth in Section 214.3 is completed to the satisfaction of the Central Valley Regional Water Quality Control Board and such other local agencies that have jurisdiction with respect to such work.

**214. Inspections: Condition of the Site: Remediation.**

**214.1 Inspections.** The City has made available for review by the Developer all documentation in City's possession related to the condition of the Site, which indicates that the soils at the Site contain elevated concentrations of metals, pesticides and petroleum hydrocarbons. The City has prepared a Feasibility Study /Remedial Action Plan (the "FS/RAP") for the remediation of the Site and received approval of the FS/RAP from the Central Valley

Regional Water Quality Control Board on June 1, 2016. The Developer shall have the right to conduct such additional investigations of the Site that it deems necessary, provided that any such investigations that require any physical alteration to the Site shall be conducted subject to a "Right of Entry" agreement in the form attached hereto as **Attachment No. 6**. The Developer's additional investigations concerning the condition of the Site shall be completed by December 18, 2017, and the Developer's approval of the condition of the Site shall be a condition precedent to the Developer's obligation to purchase the Site. If the Developer determines prior to December 18, 2017, in its sole discretion, that the soil, or any other conditions, are not in all respects entirely suitable for the development or uses contemplated herein, then the Developer shall be entitled to terminate this Agreement pursuant to Section 205.1. Developer shall provide written notice of such termination within such one hundred eighty (180) days period. After such time, Developer shall forfeit its right to terminate this Agreement on the basis set forth in this Section 213.1.

214.2 "As Is". The Site shall be conveyed from the City to the Developer in an "as-is" condition, with no warranties, express or implied, as to the physical condition thereof, the presence or absence of any latent or patent condition thereon or therein.

214.3 Remediation of the Site. Developer agrees that it shall, at its sole cost and expense, and immediately following Close of Escrow, pursue and complete all Environmental Response Actions (defined below) on the Site in accordance with the FS/RAP, including but not limited to implementation of the approved excavation and off-Site disposal remediation as contemplated in the FS/RAP, and the Remedial Design/Remedial Action Workplan that shall be prepared and approved in furtherance of the FS/RAP. Such Environmental Response Actions or other remediation actions shall be sufficient to place the Site in a condition suitable for the development contemplated herein, including without limitation the remediation of environmental Contamination at the Site to the satisfaction of State and local agencies having jurisdiction with respect to such work, including but not limited to the Central Valley Water Quality Control Board, and to the satisfaction of the Developer's private construction lender. Developer shall commence the Environmental Response Actions not more than ninety (90) days following Close of Escrow.

214.4 Developer Indemnity. Developer acknowledges that it is aware of the existing Contamination (as defined below) on the Site, and further acknowledges that the Purchase Price to be paid by the Developer for the Site has been determined to be the fair market value of the Site taking into account such Contamination. Developer agrees, from and after Close of Escrow, to defend, indemnify, protect and hold harmless the City and its officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns ("City Indemnitees") from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions (as defined herein), claims, losses, damages, fines, penalties, expenses, Environmental Response Costs (as defined herein) or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys' fees and experts' and consultants' fees), which arise out of acts or omissions occurring at any time either prior to or following Close of Escrow, unless caused by an act or omission constituting gross negligence by City Indemnitees, resulting from or in connection with the actual or claimed generation, storage, handling, transportation, use, presence, placement,

migration and/or release of Hazardous Materials (as defined herein), at, on, in, beneath or from the Site (collectively referred to as "Contamination"). Developer's defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination, at Developer's sole cost.

#### 214.5 Definitions.

A. "Environmental Response." As used in this Agreement, the term "Environmental Response Actions" means any and all activities, data compilations, preparation of studies or reports, interaction with environmental regulatory agencies, obligations and undertakings associated with environmental investigations, removal activities, remediation activities or responses to inquiries and notice letters, as may be sought, initiated or required in connection with any local, state or federal governmental or private party claims, including any claims by Developer or City.

B. "Environmental Response Costs." As used in this Agreement, the term "Environmental Response Costs" means any and all costs associated with Environmental Response Actions including, without limitation, any and all fines, penalties and damages.

C. "Hazardous Materials." As used in this Agreement, the term "Hazardous Materials" means any substance, material or waste which is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; or (6) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

214.6 Materiality. Developer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of Developer for the benefit of the City set forth in this Agreement are a material element of the consideration to the City for the performance of its obligations under this Agreement, and that the City would not have entered into this Agreement unless Developer's obligations were as provided for herein. Developer further acknowledges and agrees that the provisions of this Section 213 which extend representations, warranties, indemnifications, and/or covenants of Developer to the benefit of the City shall not be satisfied, waived or otherwise extinguished by City's issuance of a Certification of Completion.

215. Zoning of the Site. The City represents that APN 52-502-008 (approximately 13% of the Site) is zoned C-M SP (Heavy Commercial/Light Industrial – Specific Plan Combining District), and APN 52-324-023 (approximately 87% of the Site) is zoned C-2 SP (Community Commercial – Specific Plan Combining District). The City has initiated consideration of rezoning of the Site along with an amendment to the Central City Specific Plan and a General Plan Amendment to allow for the development of the Site as set forth herein and the use, operation and maintenance of the Project improvements to be constructed on the Site

(the "Project Entitlements"). At such time that the Site is conveyed to Developer, developer shall assume responsibility as applicant for the Project Entitlements, and shall enter into a reimbursement agreement with the City for the costs of processing such Project Entitlements in the form used by the City for the processing of land use entitlement applications.

216. Right of Access. Prior to the Close of Escrow, representatives of the Developer shall have the right of access to the Site at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement, subject to the requirements of this Section. In order to receive such right of access, the Developer shall enter into a "Right of Entry" agreement with City in a form satisfactory to City, pursuant to which Developer shall hold the City harmless from any injury or damages arising out of any activity pursuant to this Section 215. The Developer shall have access to all data and information on the Site available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

### **300. DEVELOPMENT OF THE SITE**

#### 301. Development of the Site by Developer.

301.1 Scope of Development. The Site shall be developed as provided in the Scope of Development attached hereto as **Attachment No. 4** and incorporated herein by this reference.

301.2 Basic Concept Drawings. The Developer shall prepare and submit basic concept drawings and related documents (the "Basic Concept Drawings") containing the overall plan for the development of the Site consistent with the Scope of Development (**Attachment No. 4**) to the City for review and written approval as and at the times established in the Schedule of Performance (**Attachment No. 3**). The Site shall be developed as generally established in the Basic Concept Drawings.

#### 301.3 Construction Plans, Drawings and Related Documents.

The Developer shall prepare and submit construction plans, drawings and related documents (individually and collectively, the "Construction Plans") to the City for architectural and site planning review and written approval as set forth in the Schedule of Performance. The Developer shall also prepare and submit to the City for its approval landscaping plans and related documents (collectively, the "Landscaping Plans") for the Site. The Construction Plans and the Landscaping Plans shall be consistent with the Basic Concept Drawings.

During the preparation of the Construction Plans and Landscaping Plans, City staff and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive prompt and speedy consideration.

If any revision or correction of any Construction Plan or Landscaping Plan approved by the City shall be required by any government official, agency, department or bureau

having jurisdiction, or any lending institution involved in financing, the Developer and the City shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

301.4 City Approval of Plans, Drawings and Related Documents.

A. City Review of Plans. Subject to the terms of this Agreement, the City shall have the reasonable right of architectural and site planning review of the Basic Concept Drawings, Construction Plans and Landscaping Plans, including any changes therein. The Developer shall not make any substantial changes (as defined below), between the Basic Concept Drawings and the Construction and Landscaping Plans without written approval from City, which may be granted or denied in the City's sole discretion. The City shall approve or disapprove each item on or before each item's respective Scheduled Performance Date. Failure by the City to either approve or disapprove any Construction Plan or Landscaping Plan within the times established in the Schedule of Performance shall be deemed an approval. Any disapproval shall state in writing the reasons for disapproval and the changes that the City requests be made. Any changes must be consistent with the Scope of Development and any items previously approved or deemed approved hereunder by the City. The Developer, upon receipt of a disapproval based upon powers reserved by the City hereunder, shall revise the rejected plans, drawings and related documents and resubmit them to the City as soon as possible after receipt of the notice of disapproval, provided that in no case shall the City be entitled to require changes inconsistent with the Scope of Development and any previously approved items.

B. Post-Approval Modifications. If the Developer desires to make any substantial changes (a "Plan Modification") to any Construction Plan or Landscaping Plan after such plan has been approved by the City, the Developer shall submit the Plan Modification to the City for its approval. If the respective Construction Plan or Landscaping Plan, as modified by the Plan Modification, conforms to the requirements of Section 301.3, the approvals previously granted by the City under this Section 301.4, and the Scope of Development, the City shall approve the Plan Modification and notify the Developer in writing within thirty (30) days (the "Modification Review Period") after submission to the City (an "Approved Modification"). If the City fails to respond to any Plan Modification request before the expiration of the Modification Review Period, such Plan Modification shall be deemed an Approved Modification. If a Plan Modification does not adhere to the requirements of this Section 301.4, the City shall send written notice, before the expiration of the Modification Review Period, to the Developer rejecting the Plan Modification and setting forth in detail the reasons therefor.

C. A "substantial change" means one of more of the following changes, specifically excluding those items generally considered to be tenant improvements:

1. Material changes in the layout, elevation, design, or total square footage substantially affecting architectural appearance.
2. Material changes in the use of exterior finishing materials substantially affecting architectural appearance.



3. Material changes in size or design affecting parking, bulk, building coverage or floor area ratio, building height or number of floors, frontage, signage, accessibility of public spaces, size or placement of public service or handicapped facilities; or changes in general pedestrian or vehicular circulation in, around or through the Site, layout of passenger loading zones, landscaping or size or quality of exterior pavement, retaining walls, pedestrian amenities, and exterior lighting.

301.5 Cost of Construction. The cost of the development of the Project on the Site as set forth herein shall be borne by the Developer. Prior to the Close of Escrow, the Developer shall prepare and submit to the City a construction budget setting forth the cost of the construction of the improvements to be constructed on the Site as set forth in the Scope of Development (**Attachment No. 4**).

301.6 Construction Schedule.

A. Commencement and Prosecution of Construction. After the Close of Escrow, the Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the improvements to be constructed on the Site as set forth in the Scope of Development (**Attachment No. 4**). The Developer shall begin and complete all construction and development as set forth on the Schedule of Performance.

B. Progress Report. On or before the fifth day of every third month (i.e., quarterly) during the period of construction, the Developer shall submit to the City a summary written progress report of the construction. Such progress report shall be sufficient if it includes a summary of significant construction activities from the previous month and not less than six photographs documenting the construction progress on the Site. Developer may send the progress report via e-mail to Darin Gale, Economic Development Manager at dgale@yubacity.net.

301.7 Bodily Injury, Property Damage and Workers' Compensation Insurance. Prior to the commencement of any construction on the Site or any portion thereof, the Developer shall furnish or cause to be furnished to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least ONE MILLION DOLLARS (\$1,000,000.00) for any person, ONE MILLION DOLLARS (\$1,000,000.00) for any occurrence and ONE MILLION DOLLARS (\$1,000,000.00) for property damage, naming the City as an additional or coinsured. The Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that its contractor and any subcontractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. The obligations set forth in this Section 301.8 shall remain in effect only until the City issues a Certificate of Completion as set forth in Section 307 hereof.

301.8 City and Other Governmental Agency Permits. Before commencement of construction of the improvements to be constructed on the Site as set forth in the Scope of Development (**Attachment No. 4**), the Developer shall, at its own expense, secure or cause to be secured any and all permits that may be required by the City or any other governmental agency affected by such construction, development or work.

301.9 Rights of Access. For the purposes of assuring compliance with this Agreement, representatives of the City shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements to be constructed on the Site as set forth in the Scope of Development (**Attachment No. 4**). Such representatives of the City must comply with all safety rules, and shall be those who are so identified in writing by the City Manager of the City, and shall provide not less than two (2) business days notice to the Developer prior to exercising the right of access under this Section 301.10. The City shall indemnify and defend the Developer and hold it harmless from any damage caused or liability arising out of this right to access.

301.10 Local, State and Federal Laws. The Developer shall carry out the construction of the improvements to be constructed on the Site as set forth herein in conformity with all applicable laws, including all applicable federal and state labor standards.

301.11 Antidiscrimination During Construction. The Developer, for itself and its successors and assigns, agrees that in the construction of the Development provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

302. Taxes, Assessments, Encumbrances and Liens. The Developer shall pay when due all real estate taxes and assessments assessed and levied on the Site for any period subsequent to the Close of Escrow. Prior to the issuance of a Certificate of Completion, the Developer shall not place or allow to be placed on the Site any mortgage, trust deed, encumbrance or lien not authorized by this Agreement. The Developer shall remove or have removed any levy or attachment made on the Site (or any portion thereof), or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto. The Developer understands that under certain conditions, its control of the Site under this Agreement may give rise to the imposition of a possessory interest tax on said property, and in such event, the Developer agrees to pay when due any such possessory interest tax.

303. Property Tax Exemption Prohibited. The Developer, for itself and its successors and assigns, covenants and agrees that it shall not apply for a property tax exemption for the Site. If the Site or a portion thereof becomes exempt from property taxes, the Developer shall be required to pay to the City an in lieu amount equal to the amount of the property tax exempted in violation of this Section 303.

304. Assignment or Transfer of Property: Assignment of Agreement: Permitted Transfers.

304.1 Assignment or Transfer of Property. After the close of escrow and prior to the issuance by the City of a Certificate of Completion, the Developer shall not, except as expressly permitted by this Agreement, sell, transfer, convey, assign, or lease (collectively, a "Property Conveyance") the whole or any part of the Site to any third party (a "Property Transferee") without the prior written approval of the City in its sole and absolute discretion, except for Permitted Transfers as provided herein. Any approved Property Conveyance shall not relieve the Developer of any obligation or liability under this Agreement, unless the City provides written consent of release to the Developer expressing what obligation or liability the Developer is thereby released from. Before the City will consider a request from the Developer for a Property Conveyance, the Property Transferee shall (1) have demonstrated to the City that it maintains the qualifications and financial responsibility necessary and adequate, as determined by the City in its sole discretion, to fulfill the obligations undertaken in this Agreement by the Developer; (2) by instrument in writing satisfactory to the City and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the City, expressly assume all of the obligations of the Developer under this Agreement and agree to be subject to all conditions and restrictions herein; and (3) submit to the City for review all instruments and other legal documents proposed to effect the proposed Property Conveyance. This Section 304.1 shall not apply subsequent to the issuance of the Certificate of Completion for the Site, nor shall it be deemed to prevent the granting of easements or permits to facilitate the development of the Site as set forth herein or to prohibit or restrict the leasing of any part or parts of the completed improvements on the Site.

304.2 Assignment of Agreement. After the Close of Escrow and prior to the issuance by the City of a Certificate of Completion, the Developer shall not, except as expressly permitted by this Agreement, transfer or assign (collectively, an "Agreement Conveyance") this Agreement to any third party without the prior written approval of the City in its sole and absolute discretion. Any approved Agreement Conveyance shall not relieve the Developer of any obligation or liability under this Agreement, unless the City provides written consent of release to the Developer expressing what obligation or liability the Developer is thereby released from. The prohibition in this Section 304.2 shall not apply subsequent to the issuance of the Certificate of Completion for the Site.

304.3 Permitted Transfers. Notwithstanding the provisions of Sections 304.1 and 304.2, and in addition to the exceptions set forth in Section 305, the Developer shall be permitted to transfer or assign a portion of this Agreement as follows:

A. A transfer of a portion or the entirety of the Site to a new legal entity, provided that Noyan Properties, L.P. maintains a majority interest in the new entity that assumes the rights and obligations under this Agreement, and Mehmet Noyan continues to be the Managing Partner of Noyan Properties, L.P.

B. A transfer of a portion of the Site, following completion of the remediation of the existing Contamination on the Site in accordance with all requirements of Section 214 of this Agreement, to Lotus Management Inc., a California corporation, or an affiliate thereof (the "Hotel Developer", for the purpose of developing the hotel component of the Project, as described in **Attachment No. 4**, provided that in the event of such transfer, the

Hotel Developer shall enter into an assignment and assumption agreement in a form attached hereto as **Attachment No. 7** to the City whereby Hotel Developer agrees to comply with the terms of this Agreement as applicable to the portion of the Site acquired by the Hotel Developer.

C. The sale or ground lease of a portion of the Site that has been improved with a completed pad, provided that such sale or ground lease is for a purpose that is in accordance with the land use entitlements for the Project. In the event of such sale or ground lease by Developer, the City shall issue a partial Certificate of Completion applicable to the subject portion of the Site.

305. Security Financing; Rights of Holders.

305.1 Mortgages, Deeds of Trust, Sales and Lease-Backs or Other Financing. Notwithstanding Sections 302 and 304 of this Agreement, mortgages, deeds of trust, sales and lease-backs or any other form of Property Conveyance required for any reasonable method of financing are permitted before issuance of a Certificate of Completion, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, the development of the Site and any other expenditures necessary and appropriate under this Agreement. The Developer shall notify the City in advance of any mortgage, deed of trust, sale or lease-back or other form of conveyance for financing if the Developer proposes to enter into the same before issuance of a Certificate of Completion. The Developer shall not enter into any such conveyance for financing without the prior written approval of the City (unless such lender shall be one of the ten (10) largest banking institutions doing business in the State of California, or one of the ten (10) largest insurance lending institutions in the United States qualified to do business in the State of California), which approval the City agrees to give if any such conveyance is given to a responsible financial or lending institution or other acceptable person or entity. Such lender shall be deemed approved unless rejected in writing by the City within ten (10) days after notice thereof to the City by the Developer. In any event, the Developer shall promptly notify the City of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the Development whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

305.2 Holder Not Obligated to Construct Improvements. The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion, nor shall any covenant or any other provision in the Deed be construed so as to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon other than the improvements described in the Scope of Development (**Attachment No. 4**).

305.3 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of the Project, the City shall

at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the City therefor. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 305.3 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 305.3. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the City, to a Certificate of Completion from the City.

305.4 Failure of Holder to Complete Project. In any case where, six (6) months after default by the Developer in completion or construction of the Project, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Site or any portion thereof has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If ownership has vested in the holder, the City, if it so desires, shall be entitled to a conveyance from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

A. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

B. All expenses with respect to foreclosure;

C. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or portions thereof;

D. The costs of any authorized improvements made by such holder;  
and

E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

305.5 Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default. In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to the Site or any portion thereof prior to the completion of development of the Site, and the holder has not exercised its option to complete the development of the Site, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Site or applicable portion thereof to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the Site as authorized herein.

306. Right of the City to Satisfy Other Liens on the Site After Title Passes. After the Close of Escrow and prior to the issuance of a Certificate of Completion for the development of the Site as set forth herein, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, the City shall, after giving prior written notice to Developer, have the right to satisfy any such liens or encumbrances, provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site to forfeiture or sale.

307. Certificate of Completion.

307.1 Issuance of Certificate. After completion of the development of the Project on the Site by the Developer and within ten (10) days after the written request of the Developer therefor, the City shall issue, in recordable form, a Certificate of Completion (the "Certificate of Completion"). Such Certificate of Completion shall be in recordable form and shall be recorded in the Office of the County Recorder of Sutter County. The Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site and of full compliance with the terms hereof.

307.2 Liability Post-Issuance of Certificate. After issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site covered by said Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by any covenants contained in the Deed, in accordance with the provisions of Section 400 of this Agreement. Except as otherwise provided herein, after the issuance of a Certificate of Completion for the Site, neither the City nor any other person shall have any rights, remedies or controls with respect to the Site that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the parties shall be as set forth in the Deed.

307.3 Delay in Issuance of Certificate. The City shall not unreasonably withhold a Certificate of Completion. If the City refuses or fails to furnish a Certificate of Completion for

the Site after written request from the Developer, the City shall, within ten (10) days after receipt of such written request, provide the Developer with a written statement explaining such failure or refusal and, set forth the necessary performance required by the Developer to obtain a Certificate of Completion. If the reason for such refusal or failure is confined to the immediate unavailability of specific items or materials for landscaping, the City will issue a Certificate of Completion upon the posting of a bond by the Developer, for the benefit of the City, in an amount representing the fair value of the work not yet completed. If the City fails to provide such written statement within said ten (10) day period, the Developer shall be deemed entitled to the Certificate of Completion and the City will promptly furnish the Developer with a Certificate of Completion.

307.4 Representation of Certificate. Any Certificate of Completion shall not constitute evidence of compliance with, or satisfaction of, any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the Project or any part thereof. A Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093 or a Certificate of Occupancy.

#### **400. USE OF THE SITE**

401. Uses. The Developer covenants and agrees for itself, and any and all of its successors and assigns, that each shall use, operate and maintain the Site for the uses permitted in the City's General Plan and other applicable land use and zoning regulations, or as otherwise permitted by law. The foregoing covenant shall run with the land and survive the issuance of a Certificate of Completion pursuant to the terms of this Agreement.

402. Obligation to Refrain From Discrimination. The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code (each as amended, repealed and replaced from time to time) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

403. Form of Nondiscrimination and Nonsegregation Clauses. The Developer shall refrain from restricting the rental, sale or lease of the Site on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code (each as amended, repealed and replaced from time to time). All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

A. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code (each as amended, repealed and replaced from time to time) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

B. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code (each as amended, repealed and replaced from time to time), in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased."

C. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code (each as amended, repealed and replaced from time to time) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

404. Effect and Duration of Covenants. Except as otherwise provided, the covenants contained in this Agreement and the Deed shall remain in effect until July 17, 2040. Notwithstanding, the covenants against discrimination shall remain in effect in perpetuity. The covenants, including those running with the land, established in this Agreement and the Deed shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, and any successor in interest to the Site or any part



thereof, for the purpose of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the City without regard to whether the City has been, remains, or is an owner of any land or interest therein in the Site, any parcel or subparcel. The City shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

## **500. DEFAULTS, REMEDIES AND TERMINATION**

### **501. Defaults – General.**

501.1 Pre-Closing Default. Subject to the extensions of time set forth in Section 604 and 605, failure or delay by either party to perform any term or provision of this Agreement prior to the Close of Escrow by the applicable Scheduled Performance Date will constitute a default under this Section 501 (a "Pre-Closing Default"). The non-defaulting party shall give written notice of a Pre-Closing Default to the party in default specifying the Pre-Closing Default complained of by the non-defaulting party. If any such Pre-Closing Default is not cured or waived by the non-defaulting party within thirty (30) days of receipt of such notice, the non-defaulting party may terminate this Agreement pursuant to Section 205 of this Agreement.

501.2 Post-Closing Default. Subject to the extensions of time set forth in Section 604 and 605, failure or delay by either party to perform any term or provision of this Agreement after the Close of Escrow by the applicable Scheduled Performance Date will constitute a default under this Section 501 (a "Post-Closing Default"). The injured party shall give written notice of a Post-Closing Default to the party in default specifying the Post-Closing Default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in Post-Closing Default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any Post-Closing Default nor shall it change the commencement date of such default. Further, except as otherwise expressly provided for in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Post-Closing Default shall not operate as a waiver of any such default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

### **502. Legal Actions.**

502.1 Institution of Legal Actions. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any Post-Closing Default, or recover damages for any such default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Sutter, State of California.

502.2 Applicable Law; Interpretation. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

502.3 Fair Dealings; Ambiguity of Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

502.4 Acceptance of Service of Process.

A. Manner of Service - City. In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law.

B. Manner of Service - Developer. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

503. 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 any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

504. Option to Repurchase, Reenter and Repossess.

504.1 Right to Repurchase. Subject to Section 604, the City shall have the right at its option to repurchase, reenter and take possession (the "Repurchase Option") of the Site with all improvements thereon if, after the Close of Escrow and prior to the issuance of the Certificate of Completion therefor, the Developer has:

A. Failed to commence remediation work and thereafter commence construction of the improvements on the Site within the times established therefor in the Schedule of Performance, where such failure has not been cured within thirty (30) days after written notice thereof from the City. For purposes of this provision, the Developer shall be deemed to "commence remediation work" only when Developer has commenced site remediation work on the Site, and "commence construction" only when the Developer has commenced rough grading on the Site, all pursuant to permits issued by the City for such remediation work and the construction of the improvements on the Site provided for herein, the final plans and specifications for which had been approved by the City; or

B. After construction has been commenced in accordance with subparagraph A. above, failed to diligently prosecute construction of the improvements on the Site through completion within the time established therefor in the Schedule of Performance, where such failure has not been cured within three (3) months after written notice thereof from the City, provided that in the event that such failure to diligently prosecute construction is due to delays that are the fault of the City, such cure period shall be extended in an amount equal to the delay caused by the City; or

C. Abandoned or substantially suspended construction of the improvements on the Site for a period of three (3) months after written notice of such abandonment or suspension from the City, provided that in the event such failure to diligently prosecute construction is due to delays that are the fault of the City, such cure period shall be extended in an amount equal to the delay caused by the City; or

D. Without the prior written consent of City, directly or indirectly, voluntarily or involuntarily sells, assigns, transfers, disposes of or further encumbers or agrees to sell, assign, transfer, dispose of or further encumber or suffer to exist any other lien against all or any portion of or any interest in the Site, except for any sale, transfer, disposition or encumbrance that is expressly permitted by the terms of this Agreement, including but not limited to a Permitted Transfer. For the purpose of this paragraph, the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law, irrespective of the fact that the Site may be exempt from such transaction during the period when owned by City.

E. This Section 504.1 shall not apply subsequent to the issuance of the Certificate of Completion for the Site, nor shall it be deemed to prevent the granting of easements or permits to facilitate the development of the Site as set forth herein or to prohibit or restrict the leasing of any part or parts of the completed improvements on the Site.

**504.2 Subordination of Repurchase. THE REPURCHASE OPTION 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, INCLUDING, WITHOUT LIMITATION, ANY MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT DELIVERED BY DEVELOPER TO A BANK OR OTHER LENDING INSTITUTION APPROVED BY THE CITY IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 305.1 OF THIS AGREEMENT, WHICH MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT IS A LIEN ON THE SITE; 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.**

504.3 Repurchase Option Payment. To exercise its right to the Repurchase Option, the City shall pay to the Developer in cash an amount equal to:

- A. The Purchase Price for the Site paid by the Developer; plus
- B. The costs actually incurred and documented by the Developer for on site labor and materials for the construction of the improvements existing on the Site at the time of the repurchase, any third-party design, planning or other preconstruction soft costs, but exclusive of amounts financed by loans secured by the Site and assumed by the City at the time of repurchase; less
- C. The amount of any unpaid assessments and any liens against the Site assumed by the City at the time of repurchase.

505. Power of Termination. Subject to Section 604, the City shall have the additional right, at its option, to terminate the estate conveyed to the Developer, to reenter and take possession of the Site with all improvements thereon and to revest in the City the estate theretofore conveyed to the Developer, if after conveyance of title to the Site and prior to issuance of the Certificate of Completion, the Developer shall:

- A. Fail to commence remediation work and thereafter commence construction of the improvements on the Site within the times established therefor in the Schedule of Performance, where such failure has not been cured within thirty (30) days after written notice thereof from the City. For purposes of this provision, the Developer shall be deemed to "commence remediation work" only when Grantee has commenced site remediation work on the Site, and "commence construction" only when the Developer has commenced rough grading on the Site, all pursuant to permits issued by the City for such remediation work and the construction of the improvements on the Site provided for herein, the final plans and specifications for which had been approved by the City; or
- B. After construction has been commenced in accordance with subparagraph 1 above, fail to diligently prosecute construction of the improvements on the Site through completion within the time established therefor in the Schedule of Performance, where such failure has not been cured within three (3) months after written notice thereof from the City, provided that in the event that such failure to diligently prosecute construction is due to delays that are the fault of the City, such cure period shall be extended in an amount equal to the delay caused by the City; or
- C. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the City, provided that in the event that such failure to diligently prosecute construction is due to delays that are the fault of the City, such cure period shall be extended in an amount equal to the delay caused by the City; or

D. Without the prior written consent of City, directly or indirectly, voluntarily or involuntarily sell, assign, transfer, dispose of or further encumber or agree to sell, assign, transfer, dispose of or further encumber or suffer to exist any other lien against all or any portion of or any interest in the Site, except for any sale, transfer disposition or encumbrance that is expressly permitted by the terms of this Agreement, including but not limited to a Permitted Transfer. For the purpose of this paragraph, the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law, irrespective of the fact that the Site may be exempt from such transaction during the period when owned by City.

E. This Section 505 shall not apply subsequent to the issuance of the Certificate of Completion for the Site, nor shall it be deemed to prevent the granting of easements or permits to facilitate the development of the Site as set forth herein or to prohibit or restrict the leasing of any part or parts of the completed improvements on the Site.

The interest created pursuant to this Section 505 shall be a "Power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from City's option to repurchase the Site under the same or similar conditions specified in Section 504 above. **THE CITY'S POWER OF TERMINATION SHALL BE SUBORDINATE AND SUBJECT TO AND BE LIMITED BY AND SHALL NOT DEFEAT, RENDER INVALID OR LIMIT:**

1. **ANY MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT PERMITTED BY THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT DELIVERED BY DEVELOPER TO A LENDING INSTITUTION APPROVED BY THE CITY IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 305.1 OF THIS AGREEMENT, WHICH MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT IS A LIEN ON THE SITE; OR**
2. **ANY RIGHTS OR INTEREST PROVIDED IN THIS AGREEMENT FOR THE PROTECTION OF THE HOLDER OF SUCH MORTGAGES, DEEDS OF TRUST OR OTHER SECURITY INSTRUMENTS.**

The grant deed shall create the City's Power of termination upon the terms and conditions of this Section 505.

Upon the reversioning in the City of title to the Site or any part thereof as provided in this Section 505, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the Site or part thereof as soon and in such manner as the City shall find feasible and consistent with the objectives of such law and of the General Plan to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or

completing the improvements, or such other improvements in their stead, as shall be satisfactory to the City and in accordance with the uses specified for the Site or part thereof in the City's General Plan. Upon such resale of the Site, the proceeds thereof shall be applied:

1. First, to reimburse the City on its own behalf or on behalf of the City for all costs and expenses incurred by the City, including, but not limited to, salaries to personnel in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the City from the Site or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site or part thereof (or, in the event the Site is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges [as determined by the County assessing official] as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site or part thereof; and any amounts otherwise owing the City by the Developer; and
2. Second, to reimburse the Developer the sum of the following: (a) the cash Purchase Price for the Site paid by the Developer; plus (b) any cash payments previously made by the Developer for the development of the Site and for the improvements existing on the Site at the time of the reentry and repossession, exclusive of amounts financed; less (c) the amount of any unpaid assessments and any liens against the Site.

Any balance remaining after such reimbursements shall be retained by the City as its property.

*As set forth above, this section is intended to create and reserve in the City a "Power of termination" under California law, and not a forfeiture prohibited by California law. To the extent that a court of competent jurisdiction determines that this Section does involve a forfeiture, however, the terms and provisions of this Section shall be strictly construed to minimize or eliminate any such forfeiture in light of the fact that the City will convey the Site to the Developer for development, and not for speculation in undeveloped land.*

## **600. GENERAL PROVISIONS**

601. Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the City and the Developer as set forth in Section 105 hereof. Such written

notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.

602. Conflicts of Interest. No official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. Further, the Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

603. Nonliability of City Officials and Employees. No official or employee of the City shall be personally liable to the Developer in the event of any default or breach by the City or for any amount that may become due to the Developer or on any obligations under the terms of this Agreement.

604. Casualties; Enforced Delay. Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; act of terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City or the City shall not excuse performance by the City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the City and the Developer.

605. Extensions. The City, in its sole and absolute discretion, may extend any required time for performance to be satisfied by the Developer under this Agreement. Any extension of time provided for in this Section 605 shall not be in effect until the Developer receives written notice from the City setting forth (1) the required performance to be extended, and (2) on what new date such performance shall be satisfied.

606. Plans and Data. Where the City is exercising its right to repurchase the Site pursuant to Section 504 hereof and the amount paid by the City to the Developer under Section 504.3 includes payment for the costs of plans and data concerning the Site, the Developer shall deliver to the City the applicable plans and data concerning the Site, and the City or any other person or entity designated by the City shall be free to use such plans and data for any reason whatsoever without further cost or liability therefor to the Developer or any other person.

607. Attorneys' Fees. Should any action be brought arising out of this Agreement including, without limitation, any action for declaratory or injunctive relief, the prevailing party shall be entitled to reasonable attorneys' fees and costs and expenses of investigation incurred,

including those incurred in appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code or any successor statutes, and any judgment or decree rendered in any such actions or proceedings shall include an award thereof.

608. Submission of Documents to the City for Approval. Whenever this Agreement requires the Developer to submit plans, drawings or other documents to the City for approval, which shall be deemed approved if not acted on by the City within a specified time, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected by the City within the stated time. If there is no time specified herein for such City action, the Developer may submit a letter requiring City approval or rejection of documents within thirty (30) days after submission to the City or such documents shall be deemed approved.

609. Amendments to this Agreement. The Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement that may be made by any of the parties hereto, lending institutions or bond counsel or financial consultants to the City, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein.

610. Entire Agreement; Waivers and Amendments.

610.1 Entire Agreement. This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through 31, inclusive, and **Attachment Nos. 1** through **6**, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

610.2 Integration of Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

610.3 Waiver; Amendments. Any waiver of any provision of this Agreement must be in writing and signed by the appropriate authorities of the City and the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Developer.

**700. TIME FOR ACCEPTANCE OF AGREEMENT BY CITY**

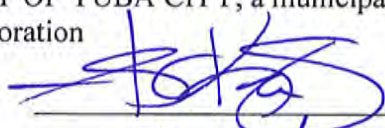
701. Acceptance by City; Effective Date. This Agreement, when executed by the Developer and delivered to the City, must be authorized, executed and delivered by the City within forty-five (45) days after the date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement shall be the date when this Agreement has been signed by the City.

SIGNATURES REQUIRED ON FOLLOWING PAGE



July 26, 2017

CITY OF YUBA CITY, a municipal corporation

By: 

Title: CITY MANAGER

By: 

Title: EXECUTIVE DIRECTOR

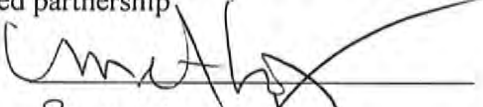
"CITY"

Approved as to form:

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

June 20, 2017

NOYAN PROPERTIES, L.P., a California limited partnership

By: 

Its: President

"DEVELOPER"

July 26, 2017

CITY OF YUBA CITY, a municipal corporation

By: [Signature]

Title: CITY MANAGER

By: [Signature]

Title: EXECUTIVE DIRECTOR

"CITY"

Approved as to form:

[Signature]

City Attorney

June 20, 2017

NOYAN PROPERTIES, L.P., a California limited partnership

By: [Signature]

Its: President

"DEVELOPER"

**CONSENT AND AGREEMENT OF SUCCESSOR AGENCY**

The Successor Agency to the Yuba City Redevelopment Agency hereby consents to the terms of the Disposition and Development Agreement entered into as Of July 26, 2017, by and between the City of Yuba City (the "City") and Noyan Properties, L.P. (the "Developer"), and does hereby agree, for itself and its officers:

1. To cooperate with the City and the Developer in implementing the provisions of the Disposition and Development Agreement;
2. To consider and act upon, in a timely and good faith manner, the matters submitted to it by the City and Developer; and
3. To undertake, in a timely and good faith manner, subject to applicable legal requirements, those actions required of the Successor Agency to implement the Project as contemplated by the Disposition and Development Agreement, including without limitation the conveyance of the Site to the City as contemplated by the Disposition and Development Agreement.

SUCCESSOR AGENCY TO THE  
YUBA CITY REDEVELOPMENT AGENCY

By: \_\_\_\_\_

*[Handwritten Signature]*  
Executive Director

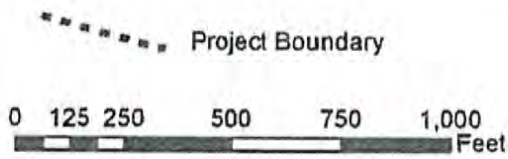
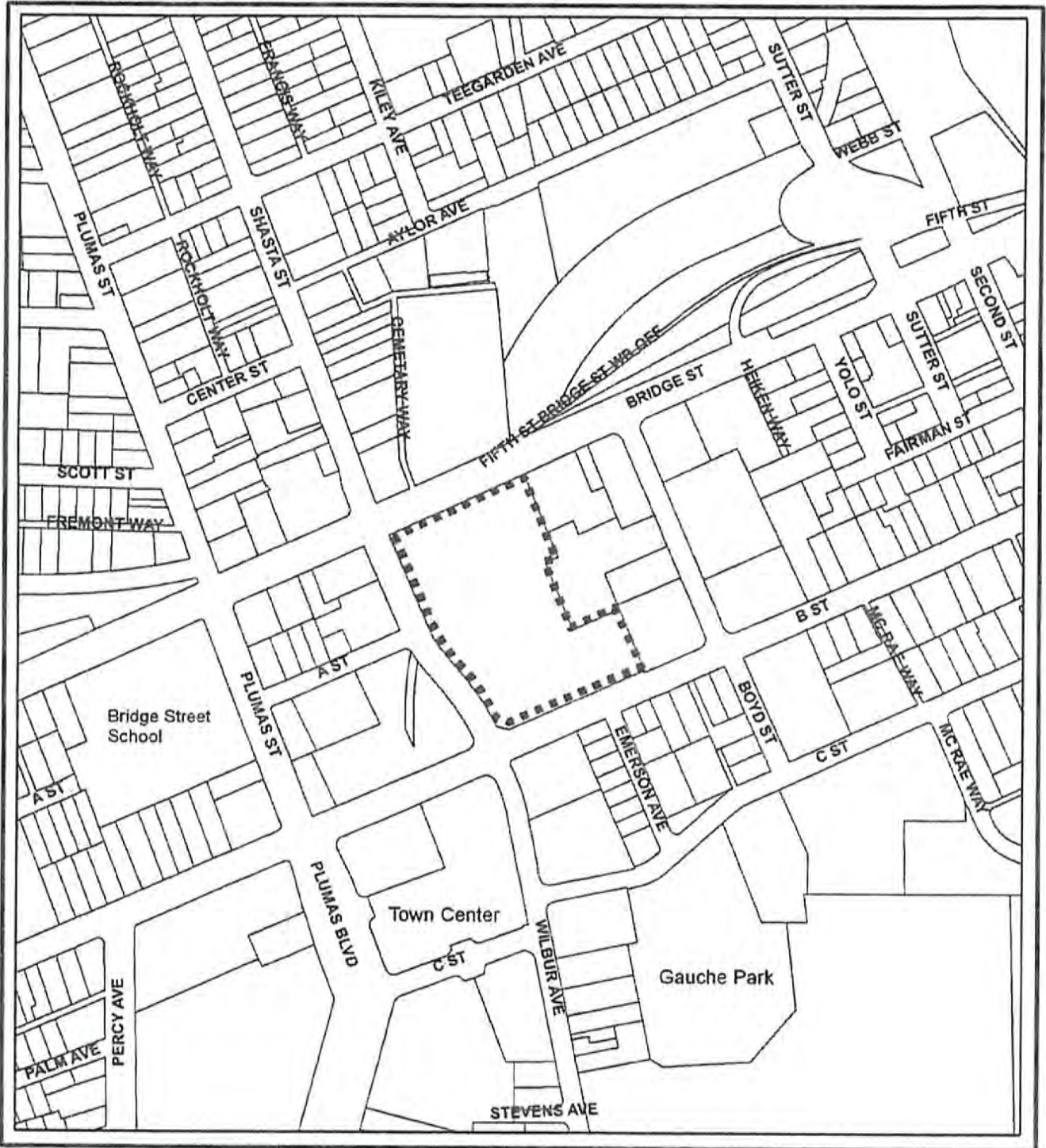
Date: \_\_\_\_\_

*[Handwritten Date]*  
7/26/17

**ATTACHMENT NO. 1**

**MAP OF THE SITE**

**[Inserted on following page]**



**FEATHER RIVER MILL  
REDEVELOPMENT PROJECT**

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**PROJECT AREA**

Project Boundary

**ATTACHMENT NO. 2**

**LEGAL DESCRIPTION OF THE SITE**

**[Inserted on following pages]**

**Assessor's Parcel Number 52-502-508**

All that real property situate in the County of Sutter, State of California, being a portion of Lot 38 of the New Helvetia, Township 15 North, Range 3 East, Mount Diablo, Base and Meridian, and being more particularly described as follows:

Parcels 1 and 2, as shown on that certain Parcel Map filed in the Office of the Recorder of the County of Sutter, State of California recorded on January 8, 1980 in Book 3 of Parcel Maps at Page 85.

END OF DESCRIPTION

**Assessor's Parcel Number 52-502-508**

All that property conveyed to the Redevelopment Agency of the City of Yuba City, from Atlas Properties Inc., a California Corporation, Kenneth L. Freeman and Marilyn J. Freeman, husband and wife, Francis M. McReynolds, Trustee of the Frances M. McReynolds Personal Trust, dated April 4th, 1997, Reginald D. Streeter also known as Reginald A. Street and Jacqueline A. Streeter, as Trustee's and to the Successor Trustees of the Reginald D. Streeter and Jacqueline A. Streeter 1989 Revocable Living Trust, the City of Yuba City and Charles O. Barrett, a married man as his sole and separate property and David L. Meyer and Vicki J. Meyer, Trustees of the Meyer Family Trust dated January 30, 1997 by Deeds dated November 14, 2003, February 13, 2004 and October 31, 2003 filed as Instrument No's 2003-0032404, 2003-0030965, 2003-0032410, 2003-0030964, 2004-003653 and 2003-0030963 in the Official Records of Sutter County, Ca combined into one Parcel more particularly described as follows:

BEGINNING at the Northeasterly comer of Lot 15 as shown on that certain Map entitled "Teegarden Addition to the Town of Yuba City", filed in the Office of the County Recorder in Book "T" of Deeds, Page 126, said point of beginning also being the Northeasterly corner of that said certain land described in Deed from Atlas Properties Inc., a California Corporation to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0032404, Sutter County Records; thence run South 64°24'35" West, along said Northerly line of Lot 15, a distance of 422.00 feet to the Northwesterly corner of that said certain land described in Deed from Francis M. McReynolds, Trustee of the Francis M. McReynolds Personal Trust, dated April 4th, 1997, to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0032410, Sutter County Records; thence run South 23°59'14" East along the East line of Shasta Street, a distance of 264.86 feet; thence continuing on said Easterly line of Shasta Street run South 24°51'25" East, a distance of 59.03 feet to the Northwest corner of that said certain land described in Deed from Kenneth L. Freeman and Marilyn J. Freeman, husband and wife to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0030965, Sutter County Records; thence run Southeasterly on a curve to the left having a radius of 362.00 feet, through a central angle of 9°34'36", tangent to said course at last mentioned point bears South 31°15'03" East, an arc distance of 60.50 feet; thence South 40°49'42" East, a distance of 80.87 feet; thence southeasterly on a tangent curve to the right having a radius of 788.00 feet through a central angle of 13°32'39" an arc distance of 186.28 feet to a point of reverse curvature; thence Southeasterly on a curve to the left having a radius of 30.00 feet through a central angle of 87°43'08" an arc distance of 45.93 feet to the North line of B Street; thence North 65°00'16" East along the said North line of B Street, a distance of 433.57 feet to the Southeast corner of Parcel 1 of that said certain land described in Deed from Charles O. Barrett, a married man as his sole and separate property and David L. Meyer and Vicki J. Meyer, Trustees of the Meyer Family Trust dated January 30, 1997 to the

Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0030963, Sutter County Records; thence run North 23°14'27" West, a distance of 200.00 feet to the Northeast corner of said Parcel I; thence South 65°00'16" West parallel to the North Line of said B Street, a distance of 150.00 feet to the Northwest corner of said Parcel 1, point also being on the Easterly line of that said certain land described in Deed from Atlas Properties Inc., a California Corporation to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0032404, Sutter County Records; thence North 23°13'42" West, along said Easterly line, a distance of 212.36 feet to the Southerly line of said Lot 15, said point also being on the South line of that said certain land described in Deed from Atlas Properties Inc., a California Corporation to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0032404, Sutter County Records; thence North 64°28'55" East along the South line of said Lot 15, a distance of 39.73 feet to the Southeast corner thereof; thence North 25°27'16" West, along the Easterly line of said Lot 15, a distance of 265.16 feet to the point of beginning containing 6.57 acres.

The basis of bearings for the above described land is Book 10 of Record of Survey, Page 167, Sutter County Records.

END OF DESCRIPTION



## ATTACHMENT NO. 3

### SCHEDULE OF PERFORMANCE

ACTION	DATE
1. <u>Deposit.</u> The Developer has delivered the Deposit to the City. (Section 106)	Prior to execution of this Agreement by the City.
2. <u>Opening of Escrow.</u> The City shall open the Escrow. (Section 202)	Within 5 days after execution of this Agreement by the City.
3. <u>Submission – Basic Concept Drawings.</u> The Developer shall prepare and submit to the City for review and approval the Basic Concept Drawings. (Section 301.2)	Within 90 days after execution of this Agreement by the City
4. <u>Approval – Basic Concept Drawings.</u> The City shall approve or disapprove the Basic Concept Drawings. (Section 301.4)	Within 30 days after receipt thereof by the City.
5. <u>Submission – Construction Plans.</u> The Developer shall prepare and submit to the City for review and approval the Construction Plans and Landscaping Plans. (Section 301.3)	Prior to completion of all remedial work.
6. <u>Approval – Construction Plans.</u> The City shall approve or disapprove the Construction Plans and Landscaping Plans. (Section 301.4)	Within 30 days after receipt thereof by the City.
7. <u>Developer’s Site Investigations.</u> The Developer shall conduct and complete its additional Site investigations. (Section 213.1)	Within 90 days after the close of escrow.

**ACTION**

**DATE**

8. Submission – Construction Budget The Developer shall submit to the City a remedial action budget for the construction of the improvements to be constructed on the Site. (Section 301.5) Within 120 days after the close of escrow.
9. Submission – Evidence of Construction Financing The Developer shall submit a budget and provide evidence of financing. (Section 204.1(C)) Prior to the date set forth herein for the Close of Escrow.
10. Submission – Construction Contract. The Developer shall provide City with a copy of a construction contract with a licensed general contractor for remedial work only. (Section 204.1(D)) Prior to the date set forth herein for the Close of Escrow.
11. Deposit of Purchase Price and Other Required Sums. The Developer shall deposit the Purchase Price and other required sums into the Escrow. (Section 209) Prior to the date set forth herein for the Close of Escrow.
12. Deposit of Deed. The City shall deposit the Deed into the Escrow. (Section 208) Prior to the date set forth herein for the Close of Escrow.
13. Land Use Approvals and Permits. The City will push forward all required land use approvals for the development of the Project on the Site. Developer shall apply for all permits. (Section 301.11)
14. Close of Escrow. The Escrow shall close as set forth in the Agreement. (Section 202.6) Not later than 180 days from execution of this Agreement (the "Outside Closing Date").

**ACTION**

**DATE**

15. Submission – Certificates of Insurance. The Developer shall furnish to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 301.8) Prior to the date set forth herein for the commencement of construction of the Project, or any development activities on the Site.
16. Commencement of Remediation Work. The Developer shall commence the work of removal of the existing Contamination on the Site. Within 90 days after Close of Escrow, subject to any delay caused by any event referenced in Section 604 (specifically including unusually severe weather) or ongoing weather conditions that prevent commencement of such work on the Site.
17. Commencement of Construction. The Developer shall commence construction of the Project on the Site. (Section 301.7) Concurrently with, or in no event later than 90 days after completion of, the Remediation Work, subject to any delay caused by any event referenced in Section 604 (specifically including unusually severe weather) or ongoing weather conditions that prevent commencement of rough grading of the Site.
18. Completion of Construction. The Developer shall complete construction of all improvements required to be constructed on the Site pursuant to this Agreement for the hotel portion of this project. (Section 301.7) Within 18 months after commencement of construction by the Developer, subject to the 5th Street Bridge replacement project staying on schedule.
19. Issuance – Certificate of Completion. The City shall issue the Certificate of Completion. (Section 307) After completion of all construction required to be completed by the Developer on the Site and within 10 days after the written request therefor by the Developer.

## ATTACHMENT NO. 4

### SCOPE OF DEVELOPMENT

#### I. PRIVATE DEVELOPMENT

##### A. General

The Developer agrees that the Site shall be developed and improved in accordance with the provisions of this Agreement and the plans, drawings and related documents approved by the City pursuant hereto, in particular, the Developer's Basic Concept Drawings and the Construction Plans.

##### B. Remediation Work

The Developer shall undertake and complete, or cause to be undertaken and completed, remediation of environmental Contamination at the Site to the satisfaction of State and local agencies having jurisdiction with respect to such work, and to the satisfaction of the Developer's private construction lender, subject only to such on-going monitoring requirements as may be required by said agencies.

##### C. Developer's Improvements

The Developer currently plans to construct, or cause to be constructed, on the Site a commercial development that will include a first-class hotel of not less than fifty (50) rooms (the "Hotel"), surface parking equal to or greater than City Municipal Code requirements, together with other commercial/retail buildings, and all other public improvements associated therewith in accordance with applicable City requirements. The total commercial/retail space to be developed at the Site is anticipated to be approximately one hundred thousand (100,000) square feet (the "Total Developable Space"). Notwithstanding the foregoing, the City and Developer acknowledge that the improvements to be constructed on the Site may be revised by Developer from time to time provided that such improvements are consistent with the land use entitlements secured by Developer for the Site. In order to receive a Certificate of Completion under the DDA, the Developer must complete and obtain certificates of occupancy for either (i) buildings that comprise square footage equal to at least 60% of the Total Developable Space, or (ii) the Hotel and at least one additional commercial/retail building not related to the Hotel.

##### D. Architecture and Design

The improvements on the Site shall be of high architectural quality, shall be well landscaped and shall be effectively and aesthetically designed. The shape, scale of volume, exterior design and exterior finish of the building must be consonant with, visually related to, physically related to and an enhancement of adjacent buildings within the Project Area. The

Developer's Basic Concept Drawings shall describe in detail the architectural character intended for the Developer's improvements.

E. Landscaping

The landscaping shall embellish all open spaces upon the Site to integrate the improvements on the Site with adjacent sites within the Project Area. "Landscaping" shall include, but not be limited to, such materials as paving, trees, shrubs and other plant materials, landscape containers, and landscape and pedestrian lighting. Landscaping shall carry out the objectives and principles of the City's desire to accomplish a high quality aesthetic environment.

F. Signs

All signs on the exterior of the buildings are of special concern to the City and must be approved by the City (which approval shall not be unreasonably withheld).

G. Applicable Codes

The improvements on the Site shall be constructed in accordance with the Uniform Building Code (with City modifications) and the Municipal Code.

ATTACHMENT NO. 5

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

APN: \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned Grantor declares:

Documentary Transfer Tax \$ \_\_\_\_\_; City Transfer Tax \$ \_\_\_\_\_

SURVEY MONUMENT FEE \$ \_\_\_\_\_

- ] computed on the consideration or full value of property conveyed, OR
- ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,
- ] unincorporated area;  ] City of Yuba City

For valuable consideration, the receipt of which is hereby acknowledged,

THE CITY OF YUBA CITY, a municipal corporation ("Grantor"), hereby grants to NOYAN PROPERTIES, L.P., a California limited partnership ("Grantee"), the real property (the "Site") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference, subject to the following provisions contained in this grant deed (the "Deed").

1. Disposition and Development Agreement. The Site is conveyed subject to the Disposition and Development Agreement (the "DDA") entered into by and between Grantor and Grantee, dated \_\_\_\_\_, 2017. The Site is also conveyed subject to easements and other matters of record.

2. Assignment or Transfer of Property. Prior to the issuance of a "Certificate of Completion" by the Grantor, as provided in Section 307 of the DDA, Grantee shall not, except as permitted by the DDA, including but not limited to Permitted Transfers, sell, transfer, convey, assign or lease the whole or any part of the Site and the improvements thereon without the prior written approval of Grantor in its sole and absolute discretion, as set forth in Section 304 of the DDA. This Section 3 shall not apply subsequent to the issuance of the Certificate of Completion for the Site, nor shall it be deemed to prevent the granting of easements or permits to facilitate

the development of the Site or to prohibit or restrict the leasing of any part or parts of the completed improvements constructed on the Site.

3. Right of Repurchase.

A. Repurchase of Property. Grantee hereby grants to Grantor the option to repurchase, reenter and take possession of the Site and all improvements subsequently constructed thereon (the "Repurchase Right"), if prior to the issuance of a Certificate of Completion, Grantee:

(1) Fails to commence remediation work and thereafter commence construction of the improvements on the Site within the times established therefor in the DDA, where such failure has not been cured within thirty (30) days after written notice from Grantor. For purposes of this Section 4.A(1), Grantee shall be deemed to "commence remediation work" only when Grantee has commenced site remediation activities on the Site, and "commence construction" only when Grantee has commenced rough grading on the Site, all pursuant to permits issued by the City for such remediation work and construction of the improvements on the Site provided for herein, the final plans and specifications for which had been approved by the City; or

(2) After construction has been commenced in accordance with 4.A.(1) of this Deed, fails to diligently prosecute construction of the improvements through completion within the time established therefor in the DDA, where such failure has not been cured within three (3) months after written notice thereof from Grantor provided that in the event tha such failure to diligently prosecute construction is due to delays that are the fault of the City, such cure period shall be extended in an amount equal to the the delay caused by the City; or

(3) Abandons or substantially suspends construction of the improvements on the Site for a period of three (3) months after written notice of such abandonment or suspension from Grantor, provided that in the event that such failure to diligently prosecute construction is due to delays that are the fault of the City, such cure period shall be extended in an amount equal to the delay caused by the City; or

(4) Without the prior written consent of Grantor, directly or indirectly, voluntarily or involuntarily sells, assigns, transfers or disposes of, or further encumbers or suffers to exist any lien against all or any portion of, any interest in the Site or the improvements thereon, except as expressly permitted by the terms of the DDA. For the purpose of this Section 4.A(4), the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law, irrespective of the fact that the Site may be exempt from such transaction during the period when owned by Grantor.

(5) This Section 4.A shall not apply subsequent to the issuance of the Certificate of Completion for the Site, nor shall it be deemed to prevent the granting of easements or permits to facilitate the development of the Site as set forth in the DDA or to prohibit or restrict the leasing of any part or parts of the improvements on the Site, specifically

including, but not limited to, any lease to the United States of America or any other medical professionals.

B. Right of Repurchase Subordinate. The Repurchase Right shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(1) Any mortgage, deed of trust or other security instrument permitted by the DDA, including, without limitation, any mortgage, deed of trust or other security instrument approved by the City in accordance with the requirements of the DDA, which mortgage, deed of trust or other security instrument is a lien on the Site; or

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

C. Repayment of Funds to Grantee. To exercise the Repurchase Right, reenter and take possession of the Site and the improvements thereon, Grantor shall pay to Grantee in cash an amount equal to:

(1) The Purchase Price, as defined in Section 201 of the DDA, for the Site paid by Grantee; plus

(2) The costs actually incurred by Grantee for on-site labor and materials for the construction of the improvements existing on the Site at the time of the repurchase, reentry and repossession, any third-party design, planning or other preconstruction soft costs, but exclusive of amounts financed by loans secured by the Site and assumed by the Grantor at the time of repurchase; less

(3) The amount of any unpaid assessments and any liens against the Site assumed by the Grantor at the time of repurchase.

4. Conditions Subsequent; Power of Termination; Right of Reentry. Each of the provisions of subsections 4(A) through 4(D) below is expressly declared to be a condition subsequent for the benefit of Grantor. Subject to the provisions of Section 505 of the DDA, in the event any such condition should occur prior to the issuance of a Certificate of Completion by Grantor, Grantor shall have the additional right, at its option, to terminate the fee simple estate conveyed by this deed, and to reenter and take possession of the Site, including without limitation, all improvements thereon and to revert in the Grantor the estate theretofore conveyed to the Grantee, if after conveyance of title to the Site and prior to issuance of the Certificate of Completion, the Grantee shall:

A. Fail to commence remediation work and thereafter commence construction of the improvements on the Site within the times established therefor in the DDA, where such failure has not been cured within thirty (30) days after written notice from Grantor. For purposes of this Section 5.A(1), Grantee shall be deemed to "commence remediation work" only when Grantee has commenced site remediation activities on the Site, and "commence construction" only when Grantee has commenced rough grading on the Site, all pursuant to permits issued by the City for such work and construction of the improvements on the Site



provided for herein, the final plans and specifications for which had been approved by the City;  
or

B. After construction has been commenced in accordance with subdivision A above, fail to diligently prosecute construction of the improvements on the Site through completion within the time established therefore in the Schedule of Performance, where such failure has not been cured within three (3) months after written notice thereof from the Grantor, provided that in the event that such failure to diligently prosecute construction is due to delays that are the fault of the City, such cure period shall be extended in an amount equal to the delay caused by the City; or

C. Abandon or substantially suspend construction of the improvements for a period of three (3) months after written notice of such abandonment or suspension from the Grantor, provided that in the event that such failure to diligently prosecute construction is due to delays that are the fault of the City, such cure period shall be extended in an amount equal to the delay caused by the City; or

D. Without the prior written consent of the Grantor, directly or indirectly, voluntarily or involuntarily sell, assign, transfer, dispose of or further encumber or agree to sell, assign, transfer, dispose of or further encumber or suffer to exist any other lien against all or any portion of or any interest in the Site, except for any sale, transfer disposition or encumbrance that is expressly permitted by the terms of the DDA. For the purpose of this paragraph, the terms "sell" and "transfer" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliated entities, and any "change in ownership" as that term is used from time to time in California real property taxation law, irrespective of the fact that the Site may be exempt from such transaction during the period when owned by the Grantor.

E. This Section 5 shall not apply subsequent to the issuance of the Certificate of Completion for the Site, nor shall it be deemed to prevent the granting of easements or permits to facilitate the development of the Site as set forth herein or to prohibit or restrict the leasing of any part or parts of the improvements on the Site, specifically including, but not limited, any lease to the United States of America or any other medical professional(s).

The interest created pursuant to this Section 5 shall be a "Power of termination" as defined in California Civil Code Section 885.010, and shall be separate and distinct from Grantor's option to repurchase the Site under the same or similar conditions specified in Section 4 above. **THE GRANTOR'S POWER OF TERMINATION SHALL BE SUBORDINATE AND SUBJECT TO AND BE LIMITED BY AND SHALL NOT DEFEAT, RENDER INVALID OR LIMIT:**

**(1) ANY MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT PERMITTED BY THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT DELIVERED BY GRANTEE TO A LENDING INSTITUTION APPROVED BY THE GRANTOR IN ACCORDANCE WITH THE**

**REQUIREMENTS OF SECTION 305.1 OF THE DDA WHICH MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT IS A LIEN ON THE SITE; OR**

**(2) ANY RIGHTS OR INTEREST PROVIDED IN THIS AGREEMENT FOR THE PROTECTION OF THE HOLDER OF SUCH MORTGAGES, DEEDS OF TRUST OR OTHER SECURITY INSTRUMENTS.**

The grant deed shall create the Grantor's Power of termination upon the terms and conditions of this Section 5.

F. Upon the reversion in the Grantor of title to the Site or any part thereof as provided in this Section 5, the Grantor shall, pursuant to its responsibilities under state law, use its best efforts to resell the Site or part thereof as soon and in such manner as the Grantor shall find feasible and consistent with the objectives of such law and of the City's General Plan to a qualified and responsible party or parties (as determined by the Grantor) who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the Grantor and in accordance with the uses specified for the Site or part thereof in the General Plan. Upon such resale of the Site, the proceeds thereof shall be applied:

(1) First, to reimburse the Grantor for all costs and expenses incurred by the Grantor, including, but not limited to, salaries to personnel in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Grantor from the Site or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site or part thereof (or, in the event the Site is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges [as determined by the County assessing official] as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Grantee; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site or part thereof; and any amounts otherwise owing the Grantor by the Grantee; and

(2) Second, to reimburse the Grantee the sum of the following: (a) the cash Purchase Price for the Site paid by the Grantee; plus (b) any cash payments previously made by the Grantee for the development of the Site and for the improvements existing on the Site at the time of the reentry and repossession, exclusive of amounts financed; less (c) the amount of any unpaid assessments and any liens against the Site.

Any balance remaining after such reimbursements shall be retained by the Grantor as its property.

*As set forth above, this section is intended to create and reserve in the Grantor a "Power of termination" under California law, and not a forfeiture prohibited by California law. To the extent that a court of competent jurisdiction determines that this Section 5 does involve a forfeiture, however, the terms and provisions of this Section 5 shall be strictly construed to*

***minimize or eliminate any such forfeiture in light of the fact that the Grantor will convey the Site to the Grantee for development, and not for speculation in undeveloped land.***

5. No Discrimination. Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code (each as amended, repealed and replaced from time to time) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Site. All deeds, leases or contracts made relative to the Site or any part thereof shall contain or be subject to substantially the following nondiscrimination clauses:

A. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code (each as amended, repealed and replaced from time to time) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

B. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code (each as amended, repealed and replaced from time to time) in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased."

C. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Section 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code (each as amended, repealed and replaced from time to time) in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises."

6. Property Tax Exemption Prohibited. The Developer, for itself and its successors and assigns, covenants and agrees that it shall not apply for a property tax exemption for the Site. If the Site or a portion thereof becomes exempt from property taxes, the Developer shall be required to pay to the City an in lieu amount equal to the amount of the property tax exempted in violation of this Section 6.

7. Subordination of Covenants and Conditions. No violation or breach of the covenants, conditions, restrictions, provisions or limitations (individually and collectively, the "Covenants and Conditions") contained in this 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 permitted by the DDA, **INCLUDING, WITHOUT LIMITATION, ANY MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT DELIVERED BY DEVELOPER TO A LENDING INSTITUTION APPROVED BY THE CITY IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 305.1 OF THE DDA WHICH MORTGAGE, DEED OF TRUST OR OTHER SECURITY INSTRUMENT IS A LIEN ON THE SITE.**

8. Survival of Covenants and Conditions. Except as otherwise provided, the Covenants and Conditions contained in Section 2 and 7 shall remain in effect until July 17, 2040 (the termination date of the Redevelopment Plan). The Covenants and Conditions against discrimination contained in Section 6 shall remain in perpetuity. The Covenants and Conditions contained in Sections 3, 4 and 5 shall remain in effect until issuance of a Certificate of Completion. Any successor of Grantee to the Site and the improvements thereon shall be bound by any remaining Covenants and Conditions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

9. Covenants and Conditions Binding; Benefit for Grantor. The Covenants and Conditions shall be binding and for the benefit of the Grantor, its successors and assigns, and any successor in interest to the Site, the improvements thereon, or any part thereof, and such Covenants and Conditions shall run in favor of Grantor and such aforementioned parties for the entire period during which such Covenants and Conditions shall be in force and effect, without regard to whether Grantor is or remains an owner of any land or interest therein to which such Covenants and Conditions relate.

10. Breach of Covenants and Conditions. In the event of a breach of any effective Covenants or Conditions, Grantor shall have the right to exercise all of the rights and remedies

under this Deed and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The Covenants and Conditions shall be enforceable only by Grantor, its successors and assigns.

12. Conflict of Agreements. In the event of any express conflict between this Deed or the DDA, the provisions of this Deed shall control.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Deed to be executed on their behalf by their respective officers thereunto duly authorized this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_, 201\_\_

CITY OF YUBA CITY, a municipal corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

"GRANTOR"

Approved as to form:

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

The provisions of this Grant Deed are hereby approved and accepted.

\_\_\_\_\_, 201\_\_

NOYAN PROPERTIES, L.P., a California limited partnership

By: \_\_\_\_\_

Its: \_\_\_\_\_

"GRANTEE"

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE SITE**

AND WHEN RECORDED MAIL TO

CITY OF YUBA CITY  
CLERK'S OFFICE  
1201 CIVIC CENTER BLVD.  
YUBA CITY, CA. 95993

MAIL TAX STATEMENTS TO

---

## GRANT DEED

---

The undersigned grantor(s) declare(s):

Assessor's Parcel Number : 52-502-008

Documentary transfer tax is \$ .....

computed on full value of property conveyed, or

computed on full value less liens and encumbrances remaining at time of sale.

Unincorporated area

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF YUBA CITY REDEVELOPMENT AGENCY

Hereby GRANT(s) to

NOYAN PROPERTIES, L.P., a California limited partnership

The following described property in the City of Yuba City, County of Sutter, State of California more particularly described as follows:

SEE EXHIBIT A

DATED \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_



## EXHIBIT A

All that real property situate in the County of Sutter, State of California, being a portion of Lot 38 of the New Helvetia, Township 15 North, Range 3 East, Mount Diablo, Base and Meridian, and being more particularly described as follows:

Parcels 1 and 2, as shown on that certain Parcel Map filed in the Office of the Recorder of the County of Sutter, State of California recorded on January 8<sup>th</sup>, 1980 in Book 3 of Parcel Maps at Page 85.

END OF DESCRIPTION

AND WHEN RECORDED MAIL TO

CITY OF YUBA CITY  
CLERK'S OFFICE  
1201 CIVIC CENTER BLVD.  
YUBA CITY, CA. 95993

MAIL TAX STATEMENTS TO

---

## GRANT DEED

---

The undersigned grantor(s) declare(s):

Assessor's Parcel Number : 52-324-023

Documentary transfer tax is \$ .....

computed on full value of property conveyed, or

computed on full value less liens and encumbrances remaining at time of sale.

Unincorporated area

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF YUBA CITY, a Municipal Corporation

Hereby GRANT(s) to

NOYAN PROPERTIES, L.P., a California limited partnership

The following described property in the City of Yuba City, County of Sutter, State of California more particularly described as follows:

SEE EXHIBIT A

DATED \_\_\_\_\_

\_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

## EXHIBIT A

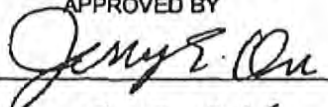
All that property conveyed to the Redevelopment Agency of the City of Yuba City, from Atlas Properties Inc., a California Corporation, Kenneth L. Freeman and Marilyn J. Freeman, husband and wife, Francis M. McReynolds, Trustee of the Frances M. McReynolds Personal Trust, dated April 4<sup>th</sup>, 1997, Reginald D. Streeter also known as Reginald A. Street and Jacqueline A. Streeter, as Trustee's and to the Successor Trustees of the Reginald D. Streeter and Jacqueline A. Streeter 1989 Revocable Living Trust, the City of Yuba City and Charles O. Barrett, a married man as his sole and separate property and David L. Meyer and Vicki J. Meyer, Trustees of the Meyer Family Trust dated January 30, 1997 by Deeds dated November 14, 2003, February 13, 2004 and October 31, 2003 filed as Instrument No's 2003-0032404, 2003-0030965, 2003-0032410, 2003-0030964, 2004-003653 and 2003-0030963 in the Official Records of Sutter County, Ca. combined into one Parcel more particularly described as follows:

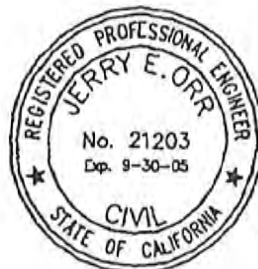
BEGINNING at the Northeasterly corner of Lot 15 as shown on that certain Map entitled "Teegarden Addition to the Town of Yuba City", filed in the Office of the County Recorder in Book "T" of Deeds, Page 126, said point of beginning also being the Northeasterly corner of that said certain land described in Deed from Atlas Properties Inc., a California Corporation to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0032404, Sutter County Records; thence run South 64°24'35" West, along said Northerly line of Lot 15, a distance of 422.00 feet to the Northwesterly corner of that said certain land described in Deed from Francis M. McReynolds, Trustee of the Francis M. McReynolds Personal Trust, dated April 4<sup>th</sup>, 1997, to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0032410, Sutter County Records; thence run South 23°59'14" East along the East line of Shasta Street, a distance of 264.86 feet; thence continuing on said Easterly line of Shasta Street run South 24°51'25" East, a distance of 59.03 feet to the Northwest corner of that said certain land described in Deed from Kenneth L. Freeman and Marilyn J. Freeman, husband and wife to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0030965, Sutter County Records; thence run Southeasterly on a curve to the left having a radius of 362.00 feet, through a central angle of 9°34'36", tangent to said course at last mentioned point bears South 31°15'03" East, an arc distance of 60.50 feet; thence South 40°49'42" East, a distance of 80.87 feet; thence southeasterly on a tangent curve to the right having a radius of 788.00 feet through a central angle of 13°32'39" an arc distance of 186.28 feet to a point of reverse curvature; thence Southeasterly on a curve to the left having a radius of 30.00 feet through a central angle of 87°43'08" an arc distance of 45.93 feet to the North line of B Street; thence North 65°00'16" East along the said North line of B Street, a distance of 433.57 feet to the Southeast corner of Parcel 1 of that said certain land described in Deed from Charles O. Barrett, a married man as his sole and separate property and David L. Meyer and Vicki J. Meyer, Trustees of the Meyer Family Trust dated January 30, 1997 to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0030963, Sutter County Records; thence run North 23°14'27" West, a distance of 200.00 feet to the Northeast corner of said Parcel 1; thence South 65°00'16" West parallel to the North Line of said B

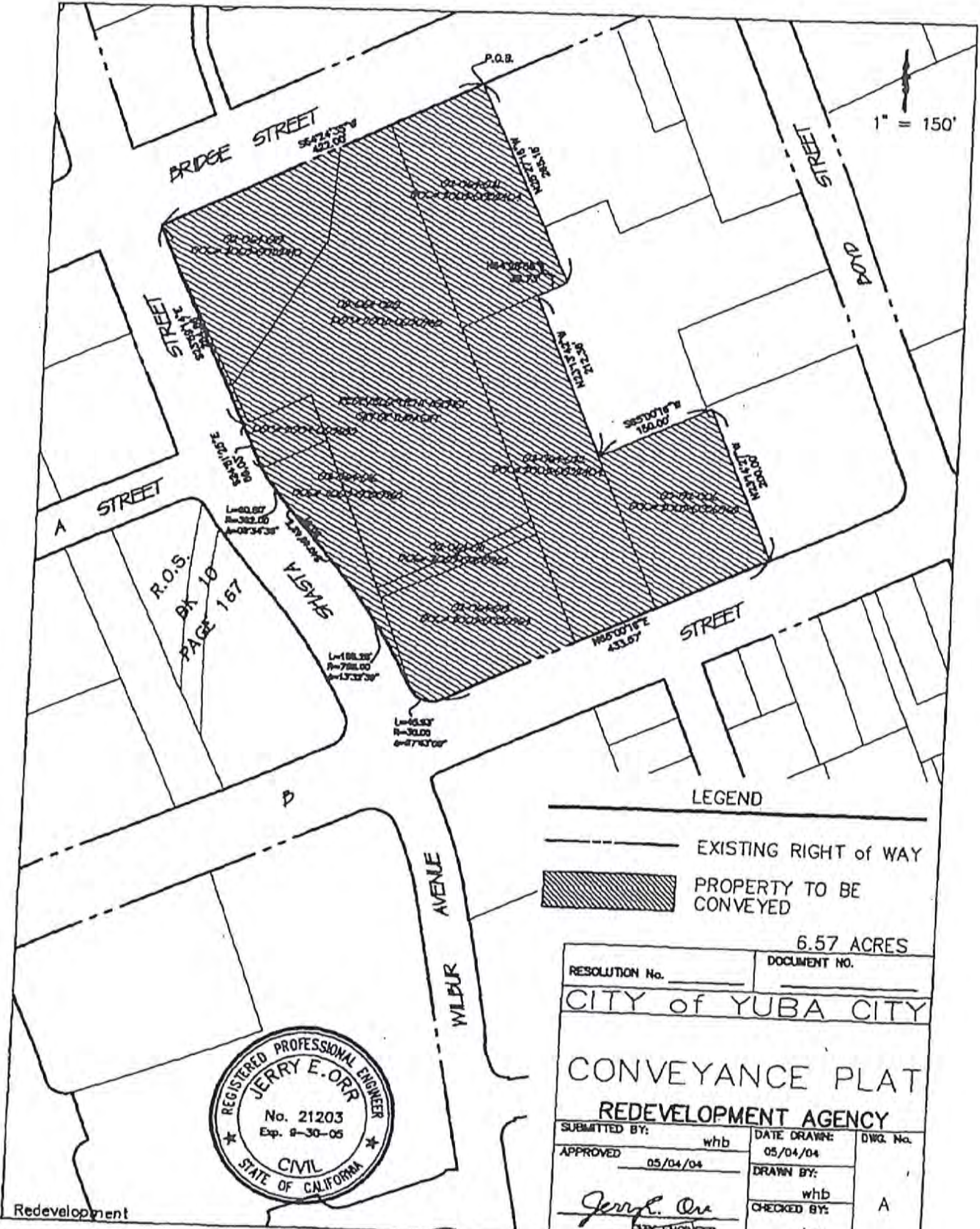
Street, a distance of 150.00 feet to the Northwest corner of said Parcel 1, point also being on the Easterly line of that said certain land described in Deed from Atlas Properties Inc., a California Corporation to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0032404, Sutter County Records; thence North 23°13'42" West, along said Easterly line, a distance of 212.36 feet to the Southerly line of said Lot 15, said point also being on the South line of that said certain land described in Deed from Atlas Properties Inc., a California Corporation to the Redevelopment Agency of the City of Yuba City, filed as Instrument No. 2003-0032404, Sutter County Records; thence North 64°28'55" East along the South line of said Lot 15, a distance of 39.73 feet to the Southeast corner thereof; thence North 25°27'16" West, along the Easterly line of said Lot 15, a distance of 265.16 feet to the point of beginning containing 6.57 acres.

The basis of bearings for the above described land is Book 10 of Record of Survey, Page 167, Sutter County Records.

END OF DESCRIPTION

APPROVED BY  
  
DATE: 5-5-04





1" = 150'

**LEGEND**

— EXISTING RIGHT of WAY

▨ PROPERTY TO BE CONVEYED

6.57 ACRES

RESOLUTION No. _____	DOCUMENT NO. _____	
<b>CITY of YUBA CITY</b>		
<b>CONVEYANCE PLAT</b>		
<b>REDEVELOPMENT AGENCY</b>		
SUBMITTED BY: whb	DATE DRAWN: 05/04/04	DWG. No.  A
APPROVED: 05/04/04	DRAWN BY: whb	
<i>Jerry E. Orr</i> CITY ENGINEER	CHECKED BY: jeo	



Redevelopment

**ACKNOWLEDGMENT**

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

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

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## ACKNOWLEDGMENT

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

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

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## ATTACHMENT 2



**AMENDMENT NO. 1 TO  
DISPOSITION AND DEVELOPMENT AGREEMENT**

This Amendment No. 1 to Disposition and Development Agreement, dated for reference purposes as of January 16, 2018, is entered into by the CITY OF YUBA CITY, a municipal corporation ("City") and NOYAN PROPERTIES, L.P., a California limited partnership ("Developer") with respect to that certain Disposition and Development Agreement between City and Developer, dated as of July 26, 2017 (the "DDA"). The DDA provides for the sale of certain property (the "Property") to the Developer for development of a mixed-use commercial development project (the "Project"). Due to current circumstances, the parties desire to enter into this written agreement to extend the time period for Close of Escrow on conveyance of the Property set forth in the Schedule of Performance, included as Attachment No. 3 to the DDA.

1. The Outside Closing Date, as set forth in Item No. 14 of the Schedule of Performance (Attachment No. 3 to the DDA), is hereby amended to be "Not later than 360 days from execution of this Agreement," which date is July 20, 2018.

2. Except as specifically set forth herein, all other terms and conditions of the DDA shall remain in full force and effect.

**CITY:**  
CITY OF YUBA CITY,  
a municipal corporation

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

**DEVELOPER:**  
NOYAN PROPERTIES, L.P., a California limited  
partnership

By \_\_\_\_\_

# ATTACHMENT 3


**AMENDMENT NO. 2 TO DISPOSITION AND  
DEVELOPMENT AGREEMENT**

This Amendment No. 2 to Disposition and Development Agreement, dated for reference purposes as of November 5, 2019, is entered into by the CITY OF YUBA CITY, a municipal corporation ("City") and NOYAN PROPERTIES, L.P., a California limited partnership ("Developer") with respect to that certain Disposition and Development Agreement between City and Developer, dated as of July 26, 2017 (the "DDA"). The DDA provides for the sale of certain property (the "Property") to the Developer for development of a mixed-use commercial development project (the "Project"). Due to current circumstances, the parties desire to enter into this written agreement to extend the time period for Close of Escrow on conveyance of the Property set forth in the Schedule of Performance, included as Attachment No. to the DDA.

1. The Outstanding Closing date, as set forth in Item No. 14 of the Schedule of Performance (Attachment No. 3 to the DDA), is hereby amended to be "Not later than 360 days from execution of this agreement as amended by Amendment No. 2, which date is November 5, 2020."
2. Except as specifically set forth herein, all other terms and conditions of the DDA, as previously amended, shall remain in full force and effect.

**CITY:**

CITY OF YUBA CITY,  
a municipal corporation

By:   
\_\_\_\_\_  
City Manager

APPROVED AS TO FORM  
COUNSEL FOR YUBA CITY

  
\_\_\_\_\_  
SHANNON CHAFFIN, City Attorney  
Aleshire & Wynder, LLC

**DEVELOPER:**

NOYAN PROPERTIES, L.P., a limited  
California  
Partnership

By:   
\_\_\_\_\_

CITY OF YUBA CITY  
STAFF REPORT

**Date:** November 5, 2019  
**To:** Honorable Mayor & Members of the City Council  
**From:** Development Services Department  
**Presentation By:** Brian Millar, Interim Development Services Director

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Summary

**Subject:** Amendment to the Disposition and Development Agreement for the Feather River Mill and Associated Properties

**Recommendation:** Authorize the City Manager to approve and sign on behalf of the City, Amendment No. 2 to the Disposition and Development Agreement with Noyan Properties, L.P., with regard to the property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed use project (APN 52-324-023 & 52-502-008)

**Fiscal Impact:** None to approve the amendment.

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Purpose:

To extend the closing date for the sale of Feather River Mill with Noyan Properties, L.P. to July 20, 2020.

Background:

After entering into an exclusive right to negotiate, on July 26, 2017, the City Manager executed a City Council-approved Development and Disposition Agreement (DDA) with Noyan Prosperities, L.P. for the properties commonly referred to as the former Feather River Mill (FRM). Since that time Mr. Noyan continued to pursue possible tenants for the property, secured a signed letter of intent and is finalizing a contract with Lotus Inc., a hotel developer and operator, to construct a Holiday Inn Express at the corner of Shasta and B Streets.

Also during this time, City staff continued to move forward key projects that are crucial to the future development of FRM. This included signing a contract for the replacement of the 5th Street Bridge, analyzing traffic impacts from a variety of uses at FRM and processing a zoning change to the property to allow a hotel. The City continues to work with the developer of a hotel on approximately a 1.5 acre site of FRM. Updated planning requirements for the rest of the site, including an update to the General Plan, Zoning and the Central City Specific Plan, are ongoing by the City and anticipated to be completed in the coming months.

Due to the additional time required to rebid the 5<sup>th</sup> Street Bridge Replacement Project Mr. Noyan asked for and received City Council approval of Amendment No. 1 to the DDA, which changed the date Noyan Properties, LP, must close on the property from January 26, 2018 to July 20, 2018. The sale of the property has not yet been completed, and there was no additional extension of time for the DDA term requested or granted subsequent to July 20, 2018 until recently, when a

request for Amendment No. 2 to the DDA was filed by Noyan Properties, LP, requesting a new close date for the property sale to November 5, 2020.

**Analysis:**

The development of FRM will be a catalyst for future development opportunities along the Bridge Street Corridor. Noyan Properties has an impressive team on this project which includes a partner that specializes in the remediation of containment properties. FRM is a contaminated parcel and one of the largest hurdles to the development is the remediation of the site, which now has an approved remediation plan.

This DDA Amendment No. 2 will not change the other key aspects of the executed DDA, which included the following:

- Property to be purchased for \$1 as determined by an appraisal completed by Seevers Jordan Ziegenmeyer and as approved in the Long Range Property Management Plan.
- Noyan Properties must maintain a majority interest in the project until such time that the developer is relieved of the requirements contained in the DDA.
- Developer will provide a performance bond in the amount of \$1,000,000 as collateral that will be released upon the property being clean to the satisfaction of the Central Valley Regional Water Quality Control Board.
- Clean up on the property must commence within 90 days from the close of escrow.
- The Developer will ensure the projects meet the City's Design Guidelines and Central City Specific Plan requirements.

Key steps will include:

- Update to the Central City Specific Plan, Zoning and General Plan Designations.
- Developer to provide \$1,000,000 performance bond – Prior to close of escrow.
- Developer to provide proof of financing – Prior to close of escrow.
- Developer to commence Remediation Work – Within 90 Days after close of escrow.
- Commencement of Construction – Within 90 days after remediation is completed.

While the DDA extension term technically expired on July 21, 2018, the parties can agree to revive the DDA as amended with approval of this Amendment No. 2, which establishes a new expiration date for the DDA. The applicant has indicated to staff their intent to timely proceed with development of the site consistent with the DDA, including remediation of contaminated soils.

**Fiscal Impact:**

The project includes the sale of approximately 7.5 acres of Agency property for the appraised value of \$1.00.

**Alternatives:**

Do not approve Amendment No. 2 of the Disposition and development Agreement with Noyan Properties.

**Recommendation:**

Authorize the City Manager to approve and sign on behalf of the City, Amendment No. 2 to the Disposition and Development Agreement with Noyan Properties, L.P., with regard to the property located at the southeast corner of Bridge and Shasta Streets to be used for the future development of a mixed use project (APN 52-324-023 & 52-502-008)

**Attachments:**

1. DDA Amendment No. 2

Prepared By:

*/s/ Brian Millar*

Brian Millar  
Interim Development Services Director

Submitted By:

*/s/ Michael Rock*

Michael Rock  
City Manager

Reviewed by:

City Attorney

Finance

SLC by email

SM

# ATTACHMENT 4

## **THIRD AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT**

This THIRD AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (“**Amendment**”) is entered into this \_\_\_ day of \_\_\_\_\_, 2020 by and between the CITY OF YUBA CITY, a municipal corporation (“**City**”), H-NYC, LLC, a California limited liability company (“**Successor Developer**”), NOYAN PROPERTIES, L.P., a California limited partnership (“**Original Developer**”) and to which SUCCESSOR AGENCY TO THE YUBA CITY REDEVELOPMENT AGENCY, a public agency (“**Successor Agency**”) consents and agrees.

### **RECITALS:**

**A.** City and Original Developer entered into that certain Disposition and Development Agreement dated July 26, 2017 to which SA consented and approved which was amended by that First Amendment dated January 16, 2018 and that certain Second Amendment dated November 5, 2019 (collectively “**Original DDA**”), regarding the sale of certain unimproved (but contaminated) real property located at south east corner of Bridge and Shasta Streets in the City of Yuba (APNs 52-324-023 and 52-502-008) as legally described in the Original DDA.

**B.** Successor Agency consented and agreed to the Original DDA pursuant to that certain Consent and Agreement of Successor Agency attached to the Original DDA (“**Consent Agreement**”).

**C.** Pursuant to provisions of the Original DDA, Original Developer has assigned the Original DDA to Successor Developer which has assumed same.

**D.** The parties desire to amend the Original DDA as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, City and Developer agree as follows:

### **AGREEMENT**

- 1. Recitals.** The foregoing recitals are true and correct and incorporated herein by reference.
- 2. Defined Terms.** All terms not specifically defined in this Amendment shall have the meaning in the Original DDA.
- 3. Amendment Effective Date.** This Amendment shall be effective upon the last to occur of: (i) approval of the City Council and execution by City; (ii) approval by the Agency Board and execution by the SA; and (iii) delivery of an executed copy to Original Developer and Successor Developer (“**Amendment Effective Date**”). A copy of the executed copy of this Amendment shall be delivered to Escrow.
- 4. Assignment and Assumption.** Original Developer hereby assigns the Original DDA to Successor Developer as a permitted transfer under Section 304.3.A of the Original DDA (including all rights thereunder including the Deposit) and Successor Developer hereby assumes all obligations under the DDA. Original Developer represents and warrants to City that (i) it owns a majority interest in the Successor Developer, (ii) The Mehmet Noyan Corporation (“**MNC**”) is and remains the managing partner of Original Developer, and (iii) Mehmet Noyan is the President and owns the controlling interest in MNC. As of the Amendment Effective Date, all references in the



Original DDA as amended to “Developer” shall mean the Successor Developer.

**5. Amendments/Modifications/Confirmations.** The parties agree as follows:

**A. Section 202 (Opening of Escrow)** is amended as follows:

- (i) Escrow shall be opened by the parties within three (3) days of the Amendment Effective Date with Placer Title Company, 7643 N. Ingram Avenue Suite 101, Fresno, CA 93711 – Daryll Evans, Escrow Officer (559 261-2910 Ext. 117; [devans@placertitle.com](mailto:devans@placertitle.com)).
- (ii) The original Schedule of Performance is deleted in its entirety and replaced with the Revised Schedule of Performance attached to this Amendment as Revised Attachment No. 3.

**B. Section 205.1 (Termination for Failure of Certain Conditions)** is amended to change “Section 204.1(G)” to “Section 204.1(E)”.

**C. Section 206 (Form of Deeds)** is amended to provide that the Agency shall execute a quitclaim deed of the Site (as required by the Title Company in order to issue the Title Policy) to City (“**Quitclaim Deed**”) and any additional documents required by Title Company to issue the Title Policy. City shall issue the Grant Deed in the form of Attachment No. 5 (the main document only and deleting the additional form grant deeds which were attached to the Original DDA). At the Closing, the Quitclaim Deed shall be recorded immediately followed by recordation of the Grant Deed.

**D. Section 207 (Condition of Title)** is amended to provide that Developer shall have fourteen (14) days from the Amendment Effective Date to approve the preliminary title report (Order No. P-325152) issued by the Title Company (as amended below) dated March 27, 2020 (“**PTR**”). Developer shall take title subject to any exceptions caused by Developer including Developer’s entry onto the Site.

**E. Section 210 (Title Insurance)** is amended to provide that the Placer Title Company shall be the Title Company and the form of title policy to be issued to Buyer shall be an ALTA non-extended owner’s title policy at City’s cost. The amount of coverage on the Title Policy shall be mutually agreed by Developer, City and the Title Company. If Developer requests an ALTA extended owner’s title policy, Developer shall obtain an ALTA survey at its costs and deliver same to the Title Company in a timely manner so as to not delay the Close of Escrow.

**F. Section 213 (Performance Bond)**. Section 213 is deleted in its entirety.

**G. New Section 611 (Authority of City Manager)**. A new section 611 is added to the Original DDA as follows: “The City Manager, or his/her designee, shall in their sole discretion, have the authority to approve any extensions, approvals, waivers or other non-material amendments on behalf of City. Any such extensions, approvals, waivers or non-material amendments must be in writing executed by the City Manager or his/her designee.”

**6. Reaffirmation of Original DDA.** Except as amended by this Amendment, the Original DDA shall remain unchanged and is hereby reaffirmed, ratified and confirmed in its entirety. If

there is any conflict, inconsistency or ambiguity between the Original DDA and this Amendment, then this Amendment shall govern and control.

**7. Successor Agency.**

- A. **Consent Agreement.** Successor Agency reaffirms its obligations under the Consent Agreement with respect to the Original DDA as hereby amended.
- B. **Authority of Executive Director.** The Executive Director, or his/her designee, shall in their sole discretion, have the authority to approval any extensions, approvals, waivers or other non-material amendments on behalf of Successor Agency. Any such extensions, approvals, waivers or non-material amendments must be in writing executed by the Executive Director or his/her designee.

**8. Copy to Escrow.** As soon as practical after the Amendment Effective Date, the parties shall deliver a copy of this Amendment to Escrow.

**9. Entire Agreement.** This Amendment constitutes the entire agreement and supersedes any prior written or oral agreements among the parties with respect to the specific matters addressed herein.

**10. Authorization.** Each individual executing this Amendment on behalf of Original Developer and Successor Developer represents and warrants that he has been duly authorized to do so by Developer on whose behalf he executes this Amendment and Developer is hereby obligated to perform the terms of this Amendment.

**11. Execution in Counterpart.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall be deemed but one and the same instrument, and a facsimile copy of such execution shall be deemed an original.

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, this Amendment has been executed by City, Developer and Successor Agency as of the dates below.

**ORIGINAL DEVELOPER:**

NOYAN PROPERTIES, L.P., a California limited partnership

By: The Mehmet Noyan Corporation, a California corporation  
General Partner

By: \_\_\_\_\_  
Mehmet Noyan, President

\_\_\_\_\_, 2020

**SUCCESSOR DEVELOPER:**

H-NYC, LLC, a California limited liability company

By: NOYAN PROPERTIES, L.P., a California limited partnership

By: The Mehmet Noyan Corporation, a California corporation  
General Partner

By: \_\_\_\_\_  
Mehmet Noyan, President

\_\_\_\_\_, 2020

**CITY:**

CITY OF YUBA CITY, a municipal corporation

By: \_\_\_\_\_  
Diana Langley, Interim City Manager

\_\_\_\_\_, 2020

ATTEST:

\_\_\_\_\_  
Patricia Buckland, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER

By: \_\_\_\_\_  
Shannon Chaffin, City Attorney

**SUCCESSOR AGENCY:**

SUCCESSOR AGENCY TO THE YUBA CITY REDEVELOPMENT AGENCY, a public agency

By: \_\_\_\_\_  
Diana Langley,  
Interim Executive Director

\_\_\_\_\_, 2020

ATTEST:

\_\_\_\_\_  
Patricia Buckland, Agency Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER

By: \_\_\_\_\_  
Shannon Chaffin, Agency Counsel

# ATTACHMENT 5

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY  
APPROVING THE THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT  
AGREEMENT WITH H-NYC, LLC, (“SUCCESSOR DEVELOPER”) AND NOYAN  
PROPERTIES, L.P., (“ORIGINAL DEVELOPER”) AUTHORIZING THE SALE AND  
DEVELOPMENT OF REAL PROPERTY LOCATED AT THE SOUTHEAST CORNER OF  
BRIDGE AND SHASTA STREETS (APN 52-324-023 & 52-502-008)**

WHEREAS, the City and Original Developer entered into a Disposition and Development Agreement dated July 26, 2017, with the consent and approval of the Successor Agency to the Yuba City Redevelopment Agency (Successor Agency), which established the terms for the sale and development of real property as described therein; and

WHEREAS, the Disposition and Development Agreement dated July 26, 2017 was subsequently amended by the parties on January 16, 2018, and again on November 5, 2019, which original documents and amendments are collectively referred to herein as “Original DDA;” and

WHEREAS, the Successor Agency consented and agreed to the Original DDA pursuant to that certain Consent and Agreement of Successor Agency attached to the Original DDA (“Consent Agreement”).

WHEREAS, pursuant to provisions of the Original DDA, the Original Developer has assigned the Original DDA to Successor Developer which has assumed same; and

WHEREAS, all parties desire to enter into the third amendment to the Original DDA, and the City Council desires to approve the same.

NOW, THEREFORE, the City Council of Yuba City resolves as follows:

1. The City Council of Yuba City approves the “Third Amendment To Disposition And Development Agreement” to the Original DDA, and authorizes the City Manager to execute and take all steps necessary to carry out and effectuate the same.

2. This resolution shall take effect immediately.

The foregoing resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 21<sup>st</sup> day of April 2020.

AYES:

NOES:

ABSENT:

---

Shon Harris, Mayor

ATTEST:

---

Terrel Locke, Deputy City Clerk

APPROVED AS TO FORM  
COUNSEL FOR YUBA CITY:

---

Shannon Chaffin, City Attorney  
Aleshire & Wynder, LLP