



CITY OF RIVERBANK
PLANNING COMMISSION MEETING
SPECIAL NOTICING OF MEETING PROCEDURES FOR
Tuesday, June 15, 2021 AT 6:00 P.M.
VIA TELECONFERENCE OR VIRTUAL PLATFORM ONLY – NO PUBLIC LOCATION
OF THIS MEETING

ICE: THIS MEETING WILL BE HELD IN ACCORDANCE WITH THE GOVERNOR'S NEW EXECUTIVE ORDER N-29-20, ISSUED ON MARCH 17, 2020, REGARDING THE OPEN MEETING REQUIREMENTS OF THE RALPH M. BROWN ACT (CALIFORNIA GOVERNMENT CODE SECTION 54950, ET SEQ.), AND THE FEDERAL AMERICANS WITH DISABILITIES ACT IN AN EFFORT TO HELP AVOID THE SPREAD OF COVID-19, TO MAXIMIZE TRANSPARENCY, AND PROVIDE PUBLIC ACCESS TO CITY COUNCIL MEETINGS.

PLANNING COMMISSION AGENDA

TUESDAY, JUNE 15, 2021 – 6:00 P.M.

(THE AGENDA PACKET IS POSTED AT THE PLANNING DEPARTMENTS OFFICE AND AT
WWW.RIVERBANK.ORG)

CALL TO ORDER:

Chair: Joan Stewart

ROLL CALL:

Chair: Joan Stewart
Vice Chair: Steve Link
Commissioner: John Dinan
Commissioner: Natasha Basso
Commissioner: Mallorie Fenrich
Commissioner: Benjamin Reuben, Alternate

CONFLICT OF INTEREST

Any Planning Commission Member or Staff who has a direct Conflict of Interest on any scheduled agenda item to be considered is to declare their conflict at this time.

1. PUBLIC COMMENTS (No Action Can Be Taken)

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the Planning Commission Board. Individual comments will be limited to a **maximum of 5 minutes** per person and each person may speak once during this time; time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon. For record purposes, state your name and City of residence. Please make your comments directly to the Planning Commission Board.

2. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the Planning Commission Board unless otherwise requested by an individual Planning Commission Member or member of the public for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by motion of the Planning Commission Board.

2. CONSENT CALENDAR - Continued

Item 2.1: Posting of the Agenda. The Agenda for the June 15, 2021 Planning Commission Meeting was posted on the City Community Center bulletin board, City Hall North & South bulletin boards, Post Office, city website, and emailed to the Library on June 2, 2021.

Item 2.2: Approval of the June 15, 2021 Agenda. This provides an opportunity for the Planning Commission or Staff to recommend that an item be placed on the agenda for discussion or to adjust the proposed agenda to allow an item to be taken out of order.

Recommendation: Approval by roll call vote.

1st _____ 2nd _____

3. PLANNING COMMISSION PUBLIC HEARINGS

The public notice for Items 3.1 and 3.2 were published on June 2, 2021 in the Riverbank News.

Item 3.1: **Development Agreement Amendment (DA) 02-2021 / Dept. File #21-0007 – Perfect Union.** The Project consists of the First Amendment to the Development Agreement by and between the City of Riverbank and MWG Holdings Group, Inc., a California corporation doing business as Perfect Union. The amendment modifies the public benefit payment and extends the term of the agreement. This amendment was reviewed pursuant to the California Environmental Quality Act (CEQA). Per Section 15061 (b-3), the proposed project is not subject to CEQA as CEQA only applies to projects which have the potential for causing a significant effect on the environment.

Recommendation: Approval of Resolution #2021-010 to recommend approval of the Development Agreement amendment to the City Council.

1st _____ 2nd _____

Item 3.2: **Tentative Map 01-2020 / Dept. File #20-0011 – Riverbank Enclave – 4007 Kentucky Avenue (APNs 062-022-026 and -027).** Request to subdivide two parcels into an eighteen (18) parcel subdivision, a storm drain basin and a remainder lot. APN 062-022-026 is one (1) acre with an existing dwelling unit and adjacent APN 062-022-027 is 3.1 acres with an existing shed. Parcels range in size from 6,000 square feet to 7,664 square feet and are consistent with Single-Family (R-1) zoning district standards. The subject site is 4007 Kentucky Avenue, located at the northeast corner of Kentucky Avenue and Claus Road. Pursuant to the California Environmental Quality Act, the proposed Tentative Map is not a project within the meaning of Section 15378 of the Guidelines. Environmental impacts relating to the subdivision were evaluated and mitigated in the Mitigated Negative Declaration adopted on December 12, 2017, by the City Council. Therefore, further environmental review is not required.

Recommendation: Approval of Resolution #2021-011 to approve the map.

1st _____ 2nd _____

5. PLANNING COMMISSION COMMENTS

None.

**6. COUNTY REFERRAL/CORRESPONDENCE/INFORMATION
(Information only – No Action)**

None.

7. STAFF COMMENTS (Information Only – No Action)

Item 7.1: Project updates

8. ADJOURNMENT

Regular Planning Commission meeting – July 20, 2021 @ 6:00 pm

AFFIDAVIT OF POSTING

I hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted 72 hours prior to the meeting in accordance to the California Ralph M. Brown Act. Posted this 2nd day of June, 2021

/s/ *Gabriel Salazar, Associate Planner, City of Riverbank*

NOTICE REGARDING AMERICANS WITH DISABILITIES ACT: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Administration Dept. at (209) 863-7122 or the City Clerk at aaquilar@riverbank.org at least (48) hours prior to the meeting to enable the City to make reasonable arrangements. A notification of 48 hours before the meeting will enable the City to make reasonable arrangements to ensure any special needs are met. [28 CFR 35.102-35.104 ADA Title II].

NOTICE REGARDING NON-ENGLISH SPEAKERS: Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Riverbank City Planning Commission shall be in English and anyone wishing to address the Planning Commission is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

GENERAL INFORMATION

MEETING SCHEDULE: The Riverbank Planning Commission meets on the third Tuesday of each month at 6:00 p.m.

COMMISSION AGENDA & REPORTS: The Planning Commission agenda is posted pursuant to the California Brown Act, which only requires agenda title pages to be posted near the entrance of the location where the meeting is to be held and, when technologically able, on the City's website. Additional documents, that are not privileged, may be provided by the City in its efforts of transparency to keep the public well informed. The agenda packet (agenda plus supporting documents) are posted for public review at the Development Services Department, 6617 Third Street, Riverbank, CA and at www.riverbank.org upon distribution to a majority of the Planning Commission. A subscription to receive the agenda can be purchased for a nominal fee through the City Clerk's Office.

PUBLIC HEARINGS: In general, a public hearing is an open consideration within a meeting of the Planning Commission Board, for which special notice has been given and may be required. During a specified portion of the hearing, any resident or concerned individual is invited to present protests or offer support for the subject under consideration.

City Hall Hours: City Hall is currently CLOSED to the public.

QUESTIONS: Contact the Developmental Services Department at (209) 863-7191.

CHANGES TO THIS NOTICE OF PROCEDURES

Any documents that are not privileged or part of a Closed Session provided to a majority of the Planning Commission Board after distribution of the agenda packet, regarding any item on this agenda, will be made available for public inspection at the City Clerk's Office, 6707 Third Street, Suite A, Riverbank, CA, during normal business hours.



PUBLIC PARTICIPATION PROCEDURES FOR THE PLANNING COMMISSION MEETINGS HELD IN A TELECONFERENCE OR VIRTUAL PLATFORM IN CONFORMANCE WITH THE GOVERNOR'S EXECUTIVE ORDER N-29-20

In accordance with the Governor's Executive Order, should the meeting procedures change, the City may use the most rapid means of communication available at the time including, but not limited to, posting the notice of changes on the City's website.

PUBLIC "LIVE" VIEWING

- Charter Government Channel – 2
- AT&T U-VERSE Government Channel – 99
- YouTube Live Stream
<https://www.youtube.com/channel/UCq2x8QChEcknBq7uuJLcZow>
- Via ZOOM Platform (See instructions below)

SUBMITTING PUBLIC COMMENTS

- **Via U.S. Postal Service:** Mail comments to City of Riverbank, Attn. Planning and Building Manager, 6707 Third Street, Suite A, Riverbank, CA 95367. (Must be received **by 4:00 p.m.** prior to the meeting.)

Via Email to dkenney@riverbank.org:

- **Emails before the meeting:** (Will be distributed to the City Council)
 - **Submit No later than 4:00 p.m.** on the day of the meeting; and
 - Indicate Agenda Item # in the ***subject line***.
- **Emails during the meeting:**
 - Indicate Agenda Item # in the subject line.

Join via ZOOM Platform:

- Visit <https://zoom.us/j/94943925973?status=success> for a free account or to download the app.
- Join by this link: <https://us02web.zoom.us/j/87453956925>
- Join by accessing website: <https://zoom.us/join>
Webinar ID: 87453956925 (Added 5-24-21 dk)
- Join by telephone: **1-669-900-9128 or 1-346-248-7799**
Webinar ID: 87453956925
- **HOW DO I COMMENT?** The Chair will announce when public comment may be made for the agenda item, at which time you will:
 - **Using a computer** – click on the “raise hand” feature in the webinar controls. This will let us know you wish to speak.
 - Once you confirm that you want to be unmuted, your 3 minutes will begin for you to make your comments.
 - **Using a Phone** – Dial ***9**, which will notify us that you have a “raised hand”
 - Once you are told “you may make your comments” you will have 3 minutes to make your comments.

Learn about using ZOOM – Visit <https://support.zoom.us/hc/en-us/categories/201146643>

PUBLIC NOTICE

NOTICE OF PUBLIC HEARING

City of Riverbank Planning Commission
NOTICE IS HEREBY GIVEN that pursuant to the Governor's Executive Order N-29-20 in regard to public meeting requirements during the COVID-19 orders, the Planning Commission of the City of Riverbank will hold a public hearing on Tuesday, June 15, 2021, at 6:00 p.m. or soon thereafter via teleconference to consider the following matters:

Development Agreement Amendment (DA) 02-2021 / Dept. File #21-0007 – Perfect Union. The Project consists of an amendment to a Development Agreement for a commercial cannabis dispensary, specifically a modification to the Public Benefit Payments and adjusted term. The location is 6609 Third Street (132-011-019). This Development Agreement amendment was reviewed pursuant to the California Environmental Quality Act (CEQA). Per Section 15061 (b-3) and the proposed project is not subject to CEQA as CEQA only applies to projects which have the potential for causing a significant effect on the environment.

Tentative Map 01-2020 / Dept. File #20-0011 – Riverbank Enclave – 4007 Kentucky Avenue (APNs 062-022-026 and -027). Request to subdivide two parcels into an eighteen (18) parcel subdivision, a storm drain basin and a remainder lot. APN 062-022-026 is one (1) acre with an existing dwelling unit and adjacent APN 062-022-027 is 3.1 acres with an existing shed. Parcels range in size from 6,000 square feet to 7,664 square feet and are consistent with Single-Family (R-1) zoning district standards. The subject site is 4007 Kentucky Avenue, located at the northeast corner of Kentucky Avenue and Claus Road. Pursuant to the California Environmental Quality Act, the proposed Tentative Map is not a project within the meaning of Section 15378 of the Guidelines. Environmental impacts relating to the subdivision were evaluated and mitigated in the Mitigated Negative Declaration adopted on December 12, 2017, by the City Council. Therefore, further environmental review is not required.

NEW OPEN MEETING PROCEDURES: This public meeting will be conducted only by teleconferencing or other technological remote platforms (there is no physical location to attend this meeting). "Live" viewing is available by Charter Government Channel – 2, AT&T U-Verse Channel – 99, and YouTube live streaming at <https://www.youtube.com/channel/UCq2x8QChEcknBq7uuJLcZow>. Information for other participation options such as Zoom will be included on the last page of the agenda.

ALL INTERESTED PARTIES (COVID-19 PROCEDURES) are invited to participate in this public meeting to express opinions or submit evidence for or against the subject matter being considered.

Comments Prior to the Meeting. Written comments received via email to dkenney@riverbank.org or by U.S. Postal Service to the City of Riverbank, Attn:

Planning and Building Manager, 6707 Third St., Riverbank, 95367 no later than 4:00 p.m. on the day of the meeting will be distributed to the Planning Commission and will be made part of the official record, but will not be read aloud during the meeting.

Comments During the Meeting. Oral comments may be made by joining the meeting via Zoom. The public participation procedures are provided on the last page of the agenda that is posted (72) hours prior to the meeting at <http://www.riverbank.org/AgendaCenter>. Meeting procedure changes are permitted by the Governor's Order due to the social distancing requirements and technological obstacles may arise. Every effort will be made to timely post any changes on the City's agenda webpage.

ADA COMPLIANCE: In accordance with ADA, every effort will be made to accommodate any person requiring special assistance to participate in the meeting. Contact the City Clerk at (209) 863-7198 or cityclerk@riverbank.org at least (48) hours prior to the meeting. During the COVID-19 pandemic, staff may be working remotely.

For questions regarding the proposed subject matter contact Associate Planner Gabriel R. Salazar at gsalazar@riverbank.org, (209) 863-7191. Published this 2nd day of June 2021.

/s/ Gabriel R. Salazar, Associate Planner,
City of Riverbank

June 2, 2021
RN #21-036

June 4, 2021

NOTICE OF PUBLIC HEARING CITY OF RIVERBANK PLANNING COMMISSION NOTICE IS HEREBY GIVEN that pursuant to the Governor's Executive Order N-29-20 in regard to public meeting requirements during the COVID-19 orders, the Planning Commission of the City of Riverbank will hold a public hearing on Tuesday, June 15, 2021, at 6:00 p.m. or soon thereafter via teleconference to consider the following matters: Tentative Map 01-2020 / Dept. File #20-0011 – Riverbank Enclave – 4007 Kentucky Avenue (APNs 062-022-026 and -027). Request to subdivide two parcels into an eighteen (18) parcel subdivision, a storm drain basin and a remainder lot. APN 062-022-026 is one (1) acre with an existing dwelling unit and adjacent APN 062-022-027 is 3.1 acres with an existing shed. Parcels range in size from 6,000 square feet to 7,664 square feet and are consistent with Single-Family (R-1) zoning district standards. The subject site is 4007 Kentucky Avenue, located at the northeast corner of Kentucky Avenue and Claus Road. Pursuant to the California Environmental Quality Act, the proposed Tentative Map is exempt pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects. Therefore, further environmental review is not required. NEW OPEN MEETING PROCEDURES: This public meeting will be conducted only by teleconferencing or other technological remote platforms (there is no physical location to attend this meeting). "Live" viewing is available by Charter Government Channel – 2, AT&T U-Verse Channel – 99, and YouTube live streaming at <https://www.youtube.com/channel/UCq2x8QChEcknBq7uuJLcZow>. Information for other participation options such as Zoom will be included on the last page of the agenda. ALL INTERESTED PARTIES (COVID-19 PROCEDURES) are invited to participate in this public meeting to express opinions or submit evidence for or against the subject matter being considered. Comments Prior to the Meeting. Written comments received via email to dkenney@riverbank.org or by U.S. Postal Service to the City of Riverbank, Attn: Planning and Building Manager, 6707 Third St., Riverbank, 95367 no later than 4:00 p.m. on the day of the meeting will be distributed to the Planning Commission and will be made part of the official record, but will not be read aloud during the meeting. Comments During the Meeting. Oral comments may be made by joining the meeting via Zoom. The public participation procedures are provided on the last page of the agenda that is posted (72) hours prior to the meeting at <http://www.riverbank.org/AgendaCenter> Meeting procedure changes are permitted by the Governor's Order due to the social distancing requirements and technological obstacles may arise. Every effort will be made to timely post any changes on the City's agenda webpage. ADA COMPLIANCE: In accordance with ADA, every effort will be made to accommodate any person requiring special assistance to participate in the meeting. Contact the City Clerk at (209) 863-7198 or cityclerk@riverbank.org at least (48) hours prior to the meeting. During the COVID-19 pandemic, staff may be working remotely. For questions regarding the proposed subject matter contact Associate Planner Gabriel R. Salazar at gsalazar@riverbank.org, (209) 863-7191. Published this 4th day of June 2021. /s/ Gabriel R. Salazar, Associate Planner, City of Riverbank W00000000 Publication Dates



City of Riverbank

6707 Third Street • Riverbank CA 95367
Office: (209) 863-7128 • FAX: (209) 869-7126

This table is not for publication	
PUBLISH DATE: June 2, 2021	TO LEGAL: May 25, 2021
DEPT.: Planning	Riverbank News

NOTICE OF PUBLIC HEARING **CITY OF RIVERBANK PLANNING COMMISSION**

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Published this 2nd day of June 2021.

/s/ Gabriel R. Salazar, Associate Planner, City of Riverbank

AFFIDAVIT OF POSTING

I, Gabriel R. Salazar, hereby certify under penalty of perjury under the laws of the State of California that the foregoing public notice was posted on the exterior bulletin board of North City Hall, South City Hall, and at the Community Center, Riverbank, CA.

Dated this 2nd day of June 2021.

/s/Gabriel R. Salazar, Associate Planner, Riverbank, CA

For official use only:

Posted: 6/2/2021	Publish: 6/2/2021	Remove: 6/15/2021
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City of Riverbank

6707 Third Street • Riverbank CA 95367
Office: (209) 863-7128 • FAX: (209) 869-7126

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Published this 4th day of June 2021.

/s/ Gabriel R. Salazar, Associate Planner, City of Riverbank

**CITY OF RIVERBANK
PLANNING COMMISSION
STAFF REPORT**

Agenda Item No. 3.1

June 15, 2021

APPLICATION:	Development Agreement Amendment (DA) 02-2021 / Dept. File #21-0007 – Perfect Union. The Project consists of the First Amendment to the Development Agreement by and between the City of Riverbank and MWG Holdings Group, Inc., a California corporation doing business as Perfect Union. The amendment modifies the public benefit payment and extends the term of the agreement. This amendment was reviewed pursuant to the California Environmental Quality Act (CEQA). Per Section 15061 (b-3), the proposed project is not subject to CEQA as CEQA only applies to projects which have the potential for causing a significant effect on the environment.
LOCATION:	6609 Third Street in the City of Riverbank, Assessor’s Parcel Number 132-011-019.
GENERAL PLAN:	Mixed Use (MU)
ZONING:	Downtown Core (DC) in Downtown Specific Plan
ENVIRONMENTAL DETIRMINATION:	The proposed project qualifies for a categorical exemption pursuant to Section 15061 (b-3). The proposed project is not subject to CEQA as CEQA only applies to projects which have the potential for causing a significant effect on the environment.
PROJECT PLANNER:	Donna M. Kenney, Planning and Building Manager
RECOMMENDATION:	Adopt a Resolution of the Planning Commission of the City of Riverbank, California recommending that the City Council adopt an Ordinance to approve the first amendment to the development agreement by and between the City of Riverbank and MWG Holdings Group, Inc., a California corporation doing business as Perfect Union.

I. EXECUTIVE SUMMARY:

The proposed Resolution (Attachment 1) recommends the City Council adopt an Ordinance (Attachment 2) approving the first amendment to a development agreement by and between the City of Riverbank (“City”) and MWG Holdings Group, Inc., a California corporation doing business as Perfect Union (“Perfect Union”).

II. BACKGROUND AND ANALYSIS:

The City Council adopted Ordinance No. 2017-007 on August 22, 2017, permitting certain types of cannabis businesses in the City and providing zoning restrictions for each type of cannabis use. Ordinance 2017-007 requires each cannabis business applicant execute a development agreement with the City and obtain a conditional use permit prior to conducting commercial cannabis activity.

On January 9, 2018, the City Council adopted Ordinance No. 2018-003 approving a Development Agreement (Exhibit A) by and between the City of Riverbank ("City") and F.F.A. Inc., doing business as Riverbank Cannabis Collective for the purpose of operating a cannabis dispensary located at 6609 Third Street in the City of Riverbank, Assessor's Parcel Number 132-011-019. The term of the Development Agreement is three (3) years. During these three years, the City Manager completed several Side Letters to the Development Agreement to memorialize minor amendments or document change. These side letters include:

- Side Letter #1 – Public Benefit Amounts remain at Tier 1 for an additional six (6) months. Allows retail delivery for a one (1) year trial period.
- Side Letter #2 – Memorializes an official request for an ownership change.
- Side Letter #3 – Documents the ownership change with a signed Assumption and Assignment Agreement.

On July 23, 2019, the City entered into an Assumption and Assignment Agreement with MWG Holdings Group, Inc., a California corporation doing business as Perfect Union, to assume Development Agreement 02-2017 from F.F.A. Inc. As noted above, permission for the Assignment and Assumption Agreement's execution came in the form of a Side Letter by the City Manager.

III. DISCUSSION

Perfect Union wishes to enter into a First Amendment to the Development Agreement (Attachment 3) for a term of three (3) years. The First Amendment would retain the same major elements from the previous agreement, and Perfect Union would continue to operate a cannabis dispensary with a Type 10 Retail license at their site.

The primary difference would be an adjustment to the current Public Benefit amount. Operating a cannabis dispensary business provides Perfect Union with substantial private benefits that will place burdens upon City infrastructure, services, and neighborhoods. Cannabis businesses offset these impacts through a monthly payment classified as a "Public Benefit" amount. The Public Benefit is designed and intended to mitigate any potential impacts of the Project on the community. This dispensary was the second dispensary approved in Riverbank and the second one to operate in this County. Staff did not know at that time how these businesses would fare.

Perfect Union is a small downtown dispensary and off the beaten path. It does not enjoy a high-profile location like Flavors does on Patterson Road. The current Public Benefit amount for Perfect Union has reached its final tier of payments - a \$9,000 per month flat payment or 6% of the gross receipts, whichever is greater. The proposed First Amendment adjusts the Public Benefit amount to a flat

payment of \$5,000 or 5% of the gross receipts, whichever is greater. The term of the Development Agreement as mentioned above is proposed as three (3) years:

Effective Date	Public Benefit Due
First (1 st) Business Day of 1 st Month following the Effective Date of this Agreement through the end of the Term of this Agreement.	Five Thousand Dollars (\$5,000.00) per month or 5% of the gross receipts, whichever is greater.

Staff has prepared an ordinance for City Council approval of the First Amendment. The proposed resolution provides a recommendation from the Planning Commission that the City Council adopt the First Amendment.

IV. STRATEGIC GOALS:

The City of Riverbank Strategic Planning Session is a plan and set of goals that Riverbank will work towards for the next three (3) years. The completion of development agreements for cannabis activities is a specific objective. It is consistent with the established General Plan goal to Achieve and Maintain Financial Stability and Sustainability as part of the City's Vision "To be recognized as a premier community where individuals, families and businesses thrive in a safe and beautiful environment."

V. ENVIRONMENTAL DETERMINATION:

Perfect Union's project is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA"). Per Section 15061 (b-3), the proposed project is not subject to CEQA as CEQA only applies to projects which have the potential for causing a significant effect on the environment.

VI. RECOMMENDATION:

Adopt a Resolution recommending the City Council adopt an Ordinance approving a development agreement by and between the City of Riverbank ("City") and MWG Holdings Group, Inc., a California cooperative corporation doing business as Perfect Union.

- VI. ATTACHMENTS:**
1. Resolution No. 2021-010
 2. Ordinance No. 2021-XXX
 3. Development Agreement
Exhibit A to Attachment 3

Respectfully Submitted By:

Donna M. Kenney
Planning and Building Manager

**CITY OF RIVERBANK
RESOLUTION NO. 2021-010**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK,
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE
APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY
AND BETWEEN THE CITY OF RIVERBANK AND MWG HOLDINGS GROUP, INC., A
CALIFORNIA CORPORATION DOING BUSINESS AS PERFECT UNION**

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

WHEREAS, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 et seq., which authorizes the City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application; and

WHEREAS, the City adopted Resolution No. 99-39 authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

WHEREAS, Resolution No. 99-39 requires a written application with specified data to be submitted to the City for consideration of any development agreement; and

WHEREAS, On or about January 9, 2018, City and Developers, entered into a development agreement ("Development Agreement", Exhibit A to Attachment 3) that allowed Developer to operate a cannabis dispensary business (the "Project"); and

WHEREAS, pursuant to Government Code section 65868, City and Developer may amend the Development Agreement after notice of the amendment has been provided and the City Planning Commission and City Council hold public hearings regarding the Amendment; and

WHEREAS, City and Developer seek to enter into an amendment to the Development Agreement pursuant to state law and the Riverbank Municipal Code to update Developer's public benefit obligations and extend the term of the Development Agreement ("First Amendment"):

Effective Date	Public Benefit Due
First (1 st) Business Day of 1 st Month following the Effective Date of this Agreement through the end of the Term of this Agreement.	Five Thousand Dollars (\$5,000.00) per month or 5% of the gross receipts, whichever is greater.

; and

WHEREAS, the Planning Commission held a duly noticed public hearing on June 15, 2021, to consider the First Amendment and make recommendations to the City Council; and

WHEREAS, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 et seq.; California Code of Regulations Title 14, section 15000 et seq.), and the City determined the Project site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility; and

WHEREAS, the Planning Commission finds that an ordinance approving the First Amendment will allow the City to adequately regulate and address all impacts of the Project in the City in accordance with state law; and

WHEREAS, the Planning Commission finds that the ordinance is in the best interest of the health, welfare, and safety of the public.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, DOES HEREBY DECLARE, DETERMINE, AND ORDER: that the Planning Commission of the City of Riverbank hereby recommends by this Resolution that the City Council of the City of Riverbank adopt the proposed Ordinance No. 2021-(TBD), Attachment 2, approving the First Amendment to the Development Agreement, Attachment 3, between the City of Riverbank and MWG Holdings Group, Inc., a California corporation doing business as Perfect Union.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 15th day of June, 2021; motioned by Commissioner _____, seconded by Commissioner _____, and upon roll call was carried by the following Planning Commission vote of _____:

AYES:
NAYS:
ABSENT:
ABSTAIN:

Attest:

Approved:

Donna M. Kenney
Secretary to the Planning Commission

Joan Stewart
Chairperson

Attachment 2 – Ordinance No. 2021- (TBD)
Attachment 3 – Development Agreement
Exhibit A to Attachment 3 – Development Agreement – Recorded 4-16-18

**CITY OF RIVERBANK
ORDINANCE NO. 2021-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK
APPROVING A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY
AND BETWEEN THE CITY OF RIVERBANK AND MWG HOLDINGS GROUP, INC., A
CALIFORNIA COOPERATIVE CORPORATION DOING BUSINESS AS
PERFECT UNION.**

WHEREAS, on October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643), which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the first statewide regulatory system for medical cannabis businesses; and

WHEREAS, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six cannabis plants within a private residence; and

WHEREAS, on June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medical and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 et seq., which authorizes the City of Riverbank ("City") and an individual with an interest in real property to enter a development agreement that establishes certain development rights in real property that is subject to a development agreement application; and

WHEREAS, the City adopted Resolution No. 99-39 authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City; and

WHEREAS, Resolution No. 99-39 requires a written application with specified data to be submitted to the City for consideration of any development agreement; and

WHEREAS, On or about January 9, 2018, City and Developers, entered into a development agreement ("Development Agreement") that allowed Developer to operate a cannabis dispensary business (the "Project"); and

WHEREAS, pursuant to Government Code section 65868, City and Developer may amend the Development Agreement after notice of the amendment has been provided and the City Planning Commission and City Council hold public hearings regarding the Amendment; and

WHEREAS, City and Developer seek to enter into a First Amendment to the Development Agreement pursuant to state law and the Riverbank Municipal Code to update Developer's public benefit obligations and extend the term of the Development Agreement ("First Amendment"):

Effective Date	Public Benefit Due
First (1 st) Business Day of 1 st Month following the Effective Date of this Agreement through the end of the Term of this Agreement.	Five Thousand Dollars (\$5,000.00) per month or 5% of the gross receipts, whichever is greater.

; and

WHEREAS, environmental impacts for the Project have been reviewed and assessed by the City pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 et seq.; California Code of Regulations Title 14, section 15000 et seq.), and the City determined the Project site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility; and

WHEREAS, the Planning Commission held a duly noticed public hearing on June 15, 2021, to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, on _____, 2021, and _____, 2021, the City Council held duly noticed public hearings to consider the Development Agreement; and

WHEREAS, the City and Developer intend to enter into the First Amendment pursuant to state law and the Riverbank Municipal Code; and

WHEREAS, the City Council of the City, based on its independent review and analysis of staff's recommendations, oral and written testimony, and the record as a whole, finds, after due study, deliberation, and public hearing, and based on its independent judgment, that the following circumstances exist:

1. The Project is consistent with the goals, policies, and standards of the City of Riverbank General Plan and all other applicable standards and ordinances of the City of Riverbank.
2. In accordance with Government Code section 65864 et seq, the City Council finds that the First Amendment:

- a. Is consistent with the objectives, policies, general land uses, and programs specified in the Riverbank General Plan and any applicable specific plan; and
- b. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole; and
- c. Will not adversely affect the orderly development of property or the preservation of property values; and
- d. Is consistent with the provisions of Government Code sections 65864 through 65869.5; and
- e. Contains a legal description of the property.

NOW, THEREFORE, THE CITY OF RIVERBANK CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Riverbank approves a First Amendment to the Development Agreement by and between MWG Holdings Group, Inc., a California cooperative corporation doing business as Perfect Union, and the City of Riverbank for the development of the Project, and instructs the City Manager to execute the First Amendment to the Development Agreement subject to final, technical revisions as required and approved by the City Attorney.

SECTION 2. The City shall review the Development Agreement for compliance with its terms and conditions not less than once every twelve (12) months from the effective date of the Development Agreement; or as otherwise required pursuant to the terms of the Development Agreement.

SECTION 3. Notice of the public hearing on the proposed Development Agreement was published in the Riverbank News, a newspaper of general circulation; and notices of the public hearing on the proposed Development Agreement were mailed to all interested parties and property owners within 300 feet of the property, according to the most recent assessor's roll.

SECTION 4. Environmental impacts for the Project have been reviewed and assessed by the City pursuant to CEQA (Public Resources Code section 21000 et seq.; California Code of Regulations Title 14, section 15000 et seq.). The Project site is categorically exempt from CEQA pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility.

SECTION 5. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of

the remaining portions of the Ordinance. The City Council of the City of Riverbank hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 6. This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, and publication of the Ordinance shall occur in a newspaper of general circulation at least fifteen (15) days prior to its effective date, or a summary of the Ordinance published in a newspaper of general circulation at least five (5) days prior to adoption and again at least fifteen (15) days prior to its effective date.

The foregoing was introduced at a regular meeting of the City Council of the City of Riverbank held on the ___ day of _____, 2021; motioned by Councilmember _____, seconded by Council Member _____, and upon roll call was carried by the following vote ____:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Annabelle Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

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

City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103

APN: 132-011-019

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF RIVERBANK
MWG HOLDINGS COMPANY, INC.**

(Amendment to Recorded Document No. 2018-0010297-00)

Ordinance No. 2021-____, Adopted on _____, 2021

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF RIVERBANK AND MWG HOLDINGS GROUP, INC.**

THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF RIVERBANK AND MWG HOLDINGS GROUP, INC. ("First Amendment") is made and entered into this _____ day of _____, 2021, by and between the **CITY OF RIVERBANK**, a municipal corporation of the State of California ("City") and **MWG HOLDINGS GROUP, INC** ("Developer"), a California cooperative association doing business as **PERFECT UNION**. City and Developer may be referred to herein individually as a "Party" or collectively as the "Parties". The Parties hereby jointly render the following statement as to the background facts and circumstances underlying this Agreement.

This First Amendment is entered into with reference to the following facts:

RECITALS

- A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.
- B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.
- C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.
- D. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 et seq. (the "Development Agreement Statute"), which authorizes the City and an individual with an interest in real property to enter into a development agreement that establishes

certain development rights in real property that is subject to a development agreement application.

- E. Consistent with the requirements of the Development Agreement Statute, City has adopted Resolution No. 99-39 ("City Development Agreement Resolution") authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City.
- F. On November 20, 2017, the Riverbank Planning Commission ("Planning Commission") adopted Resolution No. 2017-025 recommending the Riverbank City Council ("City Council") adopt an ordinance establishing zoning limitations and requirements for all cannabis businesses.
- G. On December 12, 2017, the City Council adopted Ordinance No. 2017-007 to revise Riverbank Municipal Code 120 to establish a Cannabis Business Pilot Program to regulate all cannabis businesses within the City.
- H. On or about January 9, 2018, City and Developers, entered into a development agreement that allowed Developer to operate the Project within the City (the "Agreement"), attached hereto as **Exhibit A**.
- I. Pursuant to Government Code section 65867.5 and the City Development Agreement Resolution, the City Council reviewed, considered, adopted, and entered into the Agreement pursuant to Ordinance No. 2018-003.
- J. City recorded the Agreement in the Office of the Stanislaus County Recorder as Document No. 2018-010297-00.
- K. Pursuant to Government Code section 65868, an amendment to a development agreement may be made by mutual consent of the parties after notice of the amendment has been provided and the Planning Commission and City Council hold public hearings regarding the amendment.
- L. The City and Developer seek to enter into this First Amendment pursuant to state law and the Riverbank Municipal Code to update Developer's public benefit obligations and extend the term of the Development Agreement.
- A. Government Code section 65867.5 and the City Development Agreement Resolution requires the Planning Commission hold a public hearing to review an application for a development agreement.
- B. On June 15, 2021, after a properly noticed public hearing, the Planning Commission reviewed this First Amendment and provided its recommendations to the City Council.
- C. Pursuant to Government Code sections 65867 and 65868, the City Council of the

City held a duly noticed and properly conducted public hearing on _____, 2021, and _____, 2021, regarding this First Amendment. Pursuant to Government Code section 65867.5, the City Council found the provisions of this First Amendment to be consistent with the City's General Plan, and authorized execution of this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

1. Recitals and Exhibits. The above recitals and exhibits attached to this First Amendment are incorporated by this reference and hereby made a part of this First Amendment and the Agreement.

2. Effect of Agreement. Except as provided herein, the defined terms used in this First Amendment shall have the same meaning as the terms have in the Agreement. Unless expressly amended by this First Amendment, all other terms and provisions of the Agreement shall remain in full force and effect. If any terms or provisions of this First Amendment conflict with terms and provisions of the Agreement, the terms and provisions of this First Amendment shall control.

3. Entire Agreement. The Agreement, together with this First Amendment, constitute the entire Agreement.

4. Effective Date. The effective date (the "Effective Date") of this First Amendment shall be retroactive to the expiration of the Agreement. This First Amendment shall be recorded by the City in the County of Stanislaus within ten (10) days following the date that all parties have executed this First Amendment.

5. Amendments.

(a) Section 1.7 "Term" of the Agreement is hereby deleted and replaced with a new Section 1.7, as follows:

Section 1.7. Term. The "Term" of this Agreement is three (3) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer to cease all Commercial Cannabis Activity, upon which Developer shall immediately comply if City is required, directed or believes, in its sole and absolute discretion, it must temporarily halt or terminate Commercial Cannabis Activity within the City to comply with federal or state law. If City temporarily halts this Agreement to comply

with federal or state law, this Agreement shall be tolled for no longer than one (1) calendar year (the “Tolling Period”). Developer shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer shall resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year to comply with federal or state law.

(b) **Developer’s Tolling or Termination.** Developer may not temporarily halt or terminate this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

(b) Section 4.2 (a) “Public Benefit” of the Agreement is hereby deleted and replaced with a new Section 4.2 (a), as follows:

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developers that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that commensurate with the private benefits conferred on Developers (the “Public Benefit”). In consideration of the foregoing, Developers shall remit to the City as follows:

Effective Date	Public Benefit Due
First (1 st) Business Day of 1 st Month following the Effective Date of this Agreement through the end of the Term of this Agreement.	Five Thousand Dollars (\$5,000.00) per month or 5% of the gross receipts, whichever is greater.

6. Counterparts. This First Amendment may be executed in several counterparts, each which shall be deemed an original, but which together shall constitute one and the same instrument.

7. Exhibits. The following exhibits are expressly incorporated as a part of this First Amendment:

Exhibit A: The Agreement

8. Authority. The Parties and their signatories below warrant and represent that they have the power and authority to enter into this First Amendment and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purposed to be represented by such entities, persons, states or firms and that all former requirements necessary or required by state or federal law in order to enter into this First Amendment have been fully complied with. Further, by entering into this First Amendment, each Party represents that this First Amendment has not caused any

breach of the terms or conditions of any other contract or agreement to which such Party is obligated.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this First Amendment has been entered into by and between Developers and City as of the Effective Date of the First Amendment, as defined above.

“CITY”

“DEVELOPER”

Date: _____, 2021

Date: _____, 2021

CITY OF RIVERBANK, CA
a California Municipal Corporation

MWG HOLDINGS GROUP, INC. DBA
PERFECT UNION, a California
corporation

By: _____
Sean Scully
City Manager

By: _____

Its: _____

Attest:

By: _____
Annabelle Aguilar
City Clerk

Approved to as Form

By: _____
Tom Hallinan
City Attorney

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

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

Witness my hand and official seal.

(Signature)

(Seal)

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

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

Witness my hand and official seal.

(Signature)

(Seal)

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

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

Witness my hand and official seal.

(Signature)

(Seal)

Exhibit A – Development Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:

City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attention: City Clerk

Stanislaus, County Recorder
Lee Lundrigan Co Recorder Office
DOC- 2018-0010297-00

Friday, FEB 16, 2018 07:53:58
Ttl Pd \$0.00 Rcpt # 0004087051
AKN/R2/1-48

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §6103

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 9th day of January 2018, by and between the **CITY OF RIVERBANK**, a California municipal corporation ("City"), and **F.F.A.**, a California corporation doing business as **Riverbank Cannabis Collective** ("Developer"). City and Developer may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

- A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.
- B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.
- C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

- D. Developer proposes to improve, develop, and use real property to operate a Cannabis Dispensary, as defined in Section 1.4 of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4 of this Agreement and the Municipal Code of the City of Riverbank, as each may be amended from time to time (the "Project").
- E. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.
- F. Consistent with the requirements of the Development Agreement Statute, City has adopted Resolution No. 99-39 ("City Development Agreement Resolution") authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City.
- G. The City Development Agreement Resolution requires a written application with specified data to be submitted to City for consideration of any development agreement.
- H. Developer submitted an application to City for consideration of a development agreement for the Project.
- I. Developer leases that certain real property located at 6609 Third Street in the City of Riverbank, County of Stanislaus, State of California, Assessor's Parcel Number 132-011-019, of which Developer intends to improve approximately three thousand one hundred (3,100) square feet of space (the "Site"), more particularly described in the legal description attached hereto as **Exhibit A** and the Site Map attached hereto as **Exhibit B**.
- J. Government Code section 65865 requires that an applicant for a development agreement hold a legal or equitable interest in the real property that is the subject of the development agreement.
- K. Developer has leased the Site for the purpose of operating the Project. A copy of the lease is attached hereto as **Exhibit C**, within satisfaction of the requirement of Riverbank Municipal Code Chapter 120. The legal owner of the Site is aware of, and agrees to, the operation of the Project upon the Site.
- L. On August 22, 2017, the City Council adopted Ordinance No. 2017-007 to revise Riverbank Municipal Code 120 to establish a Cannabis Business Pilot Program to regulate all cannabis businesses within the City.

- M. Government Code section 65867.5 and the City Development Agreement Resolution require the Planning Commission hold a public hearing to review an application for a development agreement.
- N. On December 19, 2017, the Planning Commission, in a duly noticed and conducted public hearing, considered Developer's application for this Agreement.
- O. On December 19, 2017, the Planning Commission recommended against the City Council adoption of Ordinance No. 2017-27, which would allow Developer to operate the Project at the Site.
- P. On January 9, 2018, pursuant to Government Code section 65867.5 and the City Development Agreement Resolution, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 2018-003.
- Q. This Agreement is entered into pursuant to the Development Agreement Statute and the City Development Agreement Resolution.
- R. City and Developer desire to enter into this Agreement to (i) facilitate the orderly development of the Site; (ii) create a physical environment that is consistent with and complements City's goals and visions; (iii) protect natural resources from adverse impacts; (iv) improve, upgrade, and create additional community facilities and infrastructure, enhance services, and assist in implementing the goals of the General Plan; and (vi) reduce the economic risk of development of the Site to both City and Developer.
- S. The Parties intend, through this Agreement, to allow Developer to develop and operate the Project in accordance with the terms of this Agreement.
- T. The City Council has determined that this Agreement is consistent with City's General Plan and has conducted all necessary proceedings in accordance with Riverbank Municipal Code for the approval of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

Section 1.1. Findings. City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City's General Plan, including all text and maps in the General Plan.

Section 1.2. Recitals. The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles 1 through 10 of this Agreement, the provisions of Articles 1 through 10 shall prevail.

Section 1.3. Exhibits. The following "Exhibits" are attached to and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description
Exhibit B	Site Map
Exhibit C	Site Lease
Exhibit D	Notice of Non-performance Penalty
Exhibit E	Indemnification Agreement
Exhibit F	Notice of Termination
Exhibit G	Assignment and Assumption Agreement

Section 1.4. Definitions. In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

- (a) "Additional Insureds" has the meaning set forth in Section 6.1.
- (b) "Additional Licenses" has the meaning set forth in Section 2.4.
- (c) "Adult-use cannabis" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.
- (d) "Agreement" means this Development Agreement, inclusive of all Exhibits attached hereto.
- (e) "Application" means the cannabis business application for a development agreement required by Riverbank Municipal Code Chapter 120 and Section 4 of the City Development Agreement Resolution.

(f) "Assignment and Assumption Agreement" has the meaning set forth in Section 10.1.

(g) "AUMA" means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.

(h) "Authorized License" has the meaning set forth in Section 2.3.

(i) "Bureau" means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(j) "California Building Standards Codes" means the California Building Code, as amended from time to time, in Part 2, Volumes 1 and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Riverbank Municipal Code.

(k) "California Cannabis Laws" includes AUMA, MAUCRSA, CUA, the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11.62.83, and any other applicable laws that may be enacted or approved.

(l) "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term "marijuana" may be used interchangeably.

(m) "Cannabis Business Pilot Program" means the cannabis business program established and authorized by Riverbank Municipal Code chapter 120.

(n) "Cannabis Dispensary" means a business that engages in Commercial Cannabis Activity related to the retail sale of cannabis pursuant to a Type 10 license.

(o) "CEQA" means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.

(p) "City" means the City of Riverbank, a municipal corporation having general police powers.

(q) "City Council" means the City of Riverbank City Council, as described in Riverbank Municipal Code Section 10.05.

(r) "City Development Agreement Resolution" has the meaning set forth in Recital F.

(s) "City Manager" means the City Manager of the City of Riverbank, or his or her designee, as described in Riverbank Municipal Code Section 31.03.

(t) "Charged Party" has the meaning set forth in Section 8.1.

(u) "Charging Party" has the meaning set forth in Section 8.1.

(v) "Commercial Cannabis Activity" includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, delivery, or sale of cannabis or a cannabis product that requires a state license pursuant to MAUCRSA.

(w) "Conditional Use Permit" means a conditional use permit issued by City pursuant to the Riverbank Municipal Code.

(x) "CUA" means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.

(y) "Developer" means F.A.A., a California corporation doing business as Riverbank Cannabis Collective. Developer also has the meaning set forth in Section 6.1.

(z) "Development Agreement Statute" has the meaning set forth in Recital C.

(aa) "Exhibits" has the meaning set forth in Section 1.3.

(bb) "Gross Receipts from Operations" means total revenue actually received or receivable from operation of the Project, including: all sales; the total amount of compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service

costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;
5. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payment required under Section 4.2, all sales of cannabis products through the Project are captured. This definition shall therefore be given the broadest possible interpretation consistent with this intent.

(cc) "Indemnification Agreement" has the meaning set forth in Section 6.3.

(dd) "Major Amendment" means an amendment that shall have a material effect on the terms of the Agreement. Major Amendments shall require approval by the City Council.

(ee) "Marijuana" has the same meaning as cannabis and those terms may be used interchangeably.

(ff) "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 *et seq.*, as may be amended from time to time.

(gg) "MCRSA" has the meaning set forth in Recital A.

(hh) "Ministerial Fee" or "Ministerial Fees" has the meanings set forth in Section 4.1.

(ii) "Minor Amendment" means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement and any amendment described as minor herein. A Minor Amendment also has the meaning set forth in Section 2.4.

(jj) "Mortgage" has the meaning set forth in Article 7.

(kk) "Non-Performance Penalty" has the meaning set forth in Section 4.3.

(ll) "Notice of Non-Performance Penalty" has meaning set forth in Section 4.3.

(mm) "Notice of Termination" has the meaning set forth in Section 9.1.

(nn) "Planning Commission" means the City of Riverbank Planning Commission as established by Riverbank Municipal Code section 32.35.

(oo) "Processing Costs" has the meaning set forth in Section 1.11.

(pp) "Project" has the meaning set forth in Recital D.

(qq) "Project Litigation" has the meaning set forth in Section 10.7.

(rr) "Public Benefit" has the meaning set forth in Section 4.2.

(ss) "Public Benefit Amount" has the meaning set forth in Section 4.2.

(tt) "Site" has the meaning set forth in Recital G.

(uu) "State Licensing Authority" means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.

(vv) "State Cannabis Regulations" means the regulations promulgated by the State Licensing Authorities pursuant to the California Cannabis Laws.

(ww) "State Taxing Authority" has the meaning set forth in Section 4.2.

(xx) "Subsequent City Approvals" has the meaning set forth in Section 3.1.

(yy) "Term" has the meaning set forth in Section 1.7.

(zz) "Type 10 license" or "Retail" means a state license issued by the Bureau pursuant to the California Cannabis Laws for the retail sale of cannabis and cannabis products.

Section 1.5. Project is a Private Undertaking. The Parties agree that the Project is a private development and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent of Developer or the Project.

Section 1.6. Effective Date of Agreement. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective (the "Effective Date").

Section 1.7. Term. The "Term" of this Agreement is three (3) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer to cease all Commercial Cannabis Activity, upon which Developer shall immediately comply, if City is required, directed, or believes, in its sole and absolute discretion, it must temporarily halt or terminate Commercial Cannabis Activity within the City to comply with federal or state law. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for no longer than one (1) year (the "Tolling Period"). Developer shall not accrue or be liable to City for any Ministerial Fees or Public Benefit Amount during the Tolling Period. Developer shall resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling period exceeds one (1) calendar year to comply with federal or state law.

(b) **Developer's Tolling or Termination.** Developer may not temporarily halt or terminate this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

(c) **Special Event Closure.** Development shall close the business during the Cheese and Wine Festival and Christmas Parade events. These closing shall occur two hours before the event through two hours after the end of the event.

Section 1.8. Priority of Enactment. In the event of a conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (d) Conditional Use Permit, and (e) Subsequent City Approvals.

Section 1.9. Amendment of Agreement. This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

Section 1.10. Recordation of Development Agreement. The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days of the Effective Date.

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited Twenty Thousand Dollars (\$20,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation and processing of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, "Processing Costs"), and the first installment of the Public Benefit. The Processing Costs are refundable solely to the extent of non-expended

Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

(a) Apportionment of Processing Costs. If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, Developer shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) calendar days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may terminate this Agreement.

(b) Accounting. Developer may request, and City shall issue within a reasonable time, an accounting and written acknowledgement of Processing Costs paid to City.

ARTICLE 2 DEVELOPMENT OF PROPERTY

Section 2.1. Vested Right of Developer. During the Term, in developing the Site consistent with the Project described herein, Developer is assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer and may not be modified or terminated by City except as set forth in this Agreement or with Developer's written consent.

Section 2.2. Vested Right to Develop. In accordance with Section 2.1, Developer shall have the vested right to develop and use the Project consistent with this Agreement, the Conditional Use Permit, and Subsequent City Approvals.

Section 2.3. Permitted Uses and Development Standards. Developer shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license type (the "Authorized License"):

Type 10	Retailer
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Developer shall be permitted to use the Site consistent with the Authorized License for the Term of this Agreement and during the time Developer is applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer is required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer, Developer shall immediately cease Commercial Cannabis Activity on the Site. Developer shall also, within thirty (30) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State of California, Developer shall immediately cease operations. In this situation, this

Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

Section 2.4. Major Amendment to Permitted Uses. Developer may request to add to the Authorized License additional license types once that license is applied for or obtained from the appropriate State Licensing Authority (the "Additional Licenses").

Section 2.5. Conditional Use Permit. Prior to commencing operation of any Commercial Cannabis Activity on the Site, Developer shall obtain a Conditional Use Permit and any applicable Subsequent City Approvals. Developer shall be required to comply with all provisions of the Riverbank Municipal Code and any City rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Riverbank Municipal Code or issue rules or administrative guidelines associated with implementation of the Cannabis Business Pilot Program or Developer's obligation to strictly comply with the same.

Section 2.6. Subsequent Entitlements, Approvals, and Permits. Successful implementation of the Project shall require Developer to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Conditional Use Permit. The exercise of this discretion is not prohibited or limited in any way by this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

(a) Contemplated City Rules and Guidelines. City anticipates issuing additional rules and administrative guidelines associated with implementation of the Cannabis Business Pilot Program. City may establish requirements that are identical to or place a higher standard of care as existing provisions of the California Cannabis Laws, State Cannabis Regulations, or any amendments thereto. City reserves the right to adopt additional categories of rules or guidelines that are not listed in this section as part of the Cannabis Business Pilot Program. Developer shall comply with any and all administrative guidelines adopted by City that govern or pertain to the Project.

Section 2.7. Initiatives and Referenda. If any City ordinance, rule or regulation, or addition to the Riverbank Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer in this Agreement, such

Riverbank Municipal Code changes shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

Section 2.8. Regulation by Other Government Entities. Developer acknowledges that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

Section 2.9. Developer's Right to Rebuild. Developer may renovate portions of the Site any time within the Term of this Agreement consistent with the Riverbank Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

Section 2.10. Changes in California Building Standards Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time to the California Building Standards Codes.

Section 2.11. Changes Mandated by Federal or State Law. The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Riverbank Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Cannabis Business Pilot Program. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Riverbank Municipal Code or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Developer will attempt to preserve the terms of this Agreement and the rights of Developer derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify

this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

Section 2.12. Health and Safety Emergencies. In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency, to select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

ARTICLE 3 ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

Section 3.1. Subsequent City Approvals. City shall permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely grant, pursuant to the terms of this Agreement, the Riverbank Municipal Code, and any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. The Subsequent City Approvals shall include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Riverbank Municipal Code, and any applicable state law.

Section 3.2. Timely Processing. City shall use its reasonable best efforts to process and approve, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

Section 3.3. Cooperation between City and Developer. Consistent with the terms set forth herein, City agrees to cooperate with Developer, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

Section 3.4. Further Consistent Discretionary Actions. The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in

this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder or compromise development or use of the Site as contemplated by the Parties in this Agreement.

ARTICLE 4 PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

Section 4.1. Processing Fees and Charges. Developer shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a "Ministerial Fee" and collectively, the "Ministerial Fees").

Section 4.2. Public Benefit.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that commensurate with the private benefits conferred on Developer (the "Public Benefit"). In consideration of the foregoing, Developer shall remit to City as follows:

Effective Date	No Public Benefit Due.
First (1 st) Business Day, of the 1 st Month Following Issuance of the Conditional Use Permit.	\$5,000 or 6% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 1 Amount</u> ").
1 st Business Day, of the Seventh (7 th) Month Following Issuance of the Conditional Use Permit.	\$7,500 or 6% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 2 Amount</u> ").
1 st Business Day, of the Thirteenth (13 th) Month Following Issuance of the Conditional Use Permit Through the End of the Term.	\$9,000 or 6% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 3 Amount</u> ").

(b) Collectively, these amounts shall be known as the "Public Benefit Amount".

(c) Developer shall file an applicable statement that complies with the California State Board of Equalization, California Department of Tax and Fee

Administration, or either's successor agency (the "State Taxing Authority") for sales tax purposes showing the true and correct amount of Gross Receipts from Operations of the Project during the applicable time period. Developer shall provide a copy of such statement to City upon request by City.

Section 4.3. Reporting. Developer shall provide City with copies of any reports provided to a state cannabis licensing agency within forty-five (45) calendar days of that submission.

Any failure or refusal of Developer to provide any statement or report to City, the State Taxing Authority, or any other State Licensing Authority as required within the time required, or to pay such sums due hereunder when the same are due and payable in accordance with the provisions of this Agreement, may constitute full and sufficient grounds for the revocation or suspension of the Conditional Use Permit.

Section 4.4. Records. Developer shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code and the applicable State Cannabis Regulations. All records required by this Section shall be maintained and made available for City's examination and duplication (physical or electronic) at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee.

Section 4.5. Penalty. Developer acknowledges that to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Penalty and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer fail to make any payment when due as required by this Agreement, including the Public Benefit Amount, City may impose a "Non-Performance Penalty." A Non-Performance Penalty of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer a "Notice of Non-Performance Penalty," attached hereto as **Exhibit D**. Payment of the Non-Performance Penalty shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Penalty.

Section 4.6. Interest on Unpaid Non-Performance Penalty. If Developer fails to pay the Non-Performance Penalty after City has delivered the Notice of Non-Performance Penalty, then, in addition to the principal amount of the Non-performance Penalty, Developer shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Penalty, from a date fifteen (15) calendar days following delivery of the Notice of Non-performance Penalty.

Section 4.7. Protections from City Tax. Notwithstanding Section 4.2, for the Term of this Agreement, Developer shall be exempt from any City tax, including a business

license tax, on commercial cannabis businesses. Notwithstanding the foregoing, Developer and the Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Stanislaus, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event the Public Benefit Amount is invalidated for any reason, Developer shall be subject to any applicable tax on commercial cannabis businesses from the start date of such invalidation through the remaining Term of this Agreement.

ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods and the existing level of service of City infrastructure and services to accommodate for the Project.

ARTICLE 6 INSURANCE AND INDEMNITY

Section 6.1. Insurance. Developer shall require all persons doing work on the Project, including its contractors and subcontractors (collectively, "Developer" for purposes of this Article 6 only), to obtain and maintain insurance of the types and in the amounts described in this Article with carriers reasonably satisfactory to City.

(a) General Liability Insurance. Developer shall maintain commercial general liability insurance or equivalent form with a limit of not less than Two Million Dollars (\$2,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as "Additional Insureds" by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(b) Automotive Liability Insurance. Developer shall maintain business automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as Additional Insureds by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(c) **Workers' Compensation Insurance.** Developer shall take out and maintain during the Term of this Agreement, workers' compensation insurance for all of Developer's employees employed at or on the Project, and in the case any of the work is subcontracted, Developer shall require any general contractor or subcontractor similarly to provide workers' compensation insurance for such contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Developer. In case any class of employee engaged in work on the Project is not protected under any workers' compensation law, Developer shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Developer hereby indemnifies City for any damage resulting from failure of Developer, its agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident shall be maintained.

Section 6.2. Other Insurance Requirements. Developer shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this Article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City.

(b) Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.

(c) Replace or require the replacement of certificates, policies, and endorsements for any insurance required herein expiring prior the termination of this Agreement.

(d) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written termination of this Agreement.

(e) Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

Section 6.3. Indemnity. To the fullest extent permitted by law, Developer shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable Conditional Use Permit, or Subsequent City Approvals. Developer shall execute the indemnification agreement ("Indemnification Agreement") attached hereto as **Exhibit E**.

Section 6.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of any applicable Conditional Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit. Developer's failure to indemnify City shall be a waiver by Developer of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's right to file a claim, action or proceeding against City or City's Agents based on City's rescission or revocation of any Conditional Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's failure to indemnify City.

Section 6.5. Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer and, therefore, Developer hereby waive all claims for damages against City for breach of this Agreement. Developer further acknowledge that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waive all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer is opposed. Developer further acknowledge that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waive all claims for damages against City in this regard.

ARTICLE 7 MORTGAGEE PROTECTION

This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall immediately be deemed in default and immediately terminate upon the foreclosure or transfer of any interest in the Site or Project, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing.

ARTICLE 8 DEFAULT

Section 8.1. General Provisions.

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Any Party alleging a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than ten (10) calendar days written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured. During any such ten (10) calendar day period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal proceedings for the breach of this Agreement.

(b) After expiration of the ten (10) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within ten (10) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement, give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 within thirty (30) calendar days from the expiration of the ten (10) day notice period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to

cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in ten (10) calendar days or within such longer period specified in the notice or the defaulting Party is not diligently pursuing a cure or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

(f) In the event Developer is in default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer until the default is cured, or the Agreement is terminated.

Section 8.2. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or fax to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such periodic review. Developer shall be entitled to appeal a determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the decision of City or the City Manager, respectively. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable. The reasonable cost for City's annual review of this Agreement shall be paid by Developer, not to exceed the actual costs incurred by City in connection with the review.

Section 8.3. Estoppel Certificates.

(a) City shall, with at least twenty (20) calendar days prior written notice, execute, acknowledge, and deliver to Developer, Developer's lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement, and that the Agreement has not been modified or terminated and is enforceable in accordance with its terms and conditions.

(b) At Developer's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full

force and effect, that there are no uncured breaches or defaults in Developer's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

Section 8.4. Default by City. In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Developer shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer.

Section 8.5. Cumulative Remedies of Parties. In addition to any other rights or remedies, City or Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to section 9.1(c) of this Agreement.

Section 8.6. Enforced Delay, Extension of Times of Performance. Delays in performance, by either Party, shall not be deemed a default if such delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

Section 8.7. Appeals. Developer may appeal any adverse decision or action of City pursuant to Riverbank Municipal Chapter 99.

ARTICLE 9 TERMINATION

Section 9.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the "Notice of Termination" attached hereto as **Exhibit F**, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer's Obligations. Termination of this Agreement shall eliminate any further obligation of Developer to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate

the rights of Developer to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.3. Effect of Termination on City's Obligations. Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

Section 9.4. Survival After Termination. The rights and obligations of the Parties set forth in this Section 9.4, Section 2.8, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

ARTICLE 10 OTHER GENERAL PROVISIONS

Section 10.1. Assignment and Assumption. Developer shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of Site, or Project, subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager. This assignment prohibition applies to the corporate and business entities of Developer that are a Party to this Agreement. Any assignment or transfer prohibited by this Agreement will be considered an immediate breach of this Agreement and City may elect to immediately terminate this Agreement. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, City and Developer shall execute an "Assignment and Assumption Agreement" in the form attached hereto as **Exhibit G**.

Section 10.2. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer.

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when

If to City:

City of Riverbank
6707 3rd Street
Riverbank, California 95367
Attention: City Manager

and

Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.

If to Developer:

F.F.A.
PO Box 1386
Riverbank, CA 95367
Attention: Deanna Garcia and/or
Kimberly Cargile

{CW049305.5}

Section 10.5. Invalidity of Agreement / Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable, or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

Section 10.6. Cumulative Remedies. In addition to any other rights or remedies, City and Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. The prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Developer agree that Developer may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Developer in excess of those permitted hereunder.

Section 10.7. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City. Notwithstanding the aforementioned, City may request, and Developer will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

Section 10.8. Constructive Notice and Acceptance. Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person

acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

Section 10.9. Statute of Limitations and Laches. City and Developer agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City and Developer shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

Section 10.10. Change in State Regulations. In no event shall Developer operate the Project in violation of the Agreement, or State Cannabis Regulations, as many be amended from time to time.

Section 10.11. Standard Terms and Conditions.

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court of California in and for the County of Stanislaus.

(b) **Waiver.** A waiver by any Party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such Party available hereunder, at law or in equity, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(c) **Completeness of Instrument.** This Agreement, together with its specific references, attachments, and Exhibits, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto. Unless set forth herein, no Party to this Agreement shall be liable for any representations made, express or implied.

(d) **Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

(e) **Captions.** The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) **Number and Gender.** In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, and the word "person" includes corporations, partnerships, firms, or associations, wherever the context requires.

(g) **Mandatory and Permissive.** "Shall" and "will" and "agrees" are mandatory. "May" or "can" are permissive.

(h) **Term Includes Extensions.** All references to the Term of this Agreement shall include any extensions of such Term.

(i) **Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) **Other Documents.** The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and, to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(k) **Time is of the Essence.** Time is of the essence in this Agreement in each covenant, term, and condition herein.

(l) **Authority.** All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

(m) **Document Preparation.** This Agreement will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

(n) **Advice of Legal Counsel.** Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

(o) **Attorney's Fees and Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(p) **Calculation of Time Periods.** All time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the Effective Date of the Agreement, as defined above.

"CITY"

Date: February 13, 2018

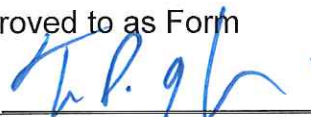
CITY OF RIVERBANK, CA
a California Municipal Corporation

By: 
Sean Scully
City Manager

Attest:

By: 
Annabelle H. Aguilar, CMC
City Clerk

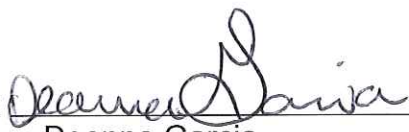
Approved to as Form

By: 
Tom Hallinan
City Attorney

"DEVELOPER"

Date: February 13, 2018

F.F.A. DBA RIVERBANK CANNABIS
COLLECTIVE, a California corporation

By: 
Deanna Garcia
Business Owner

California All-Purpose 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 Sacramento)

On February 12, 2018, before me Samantha Godinez, a Notary Public, personally appeared Deanna Garcia who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (s) 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)

California All-Purpose 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 Stanislaus)

On Feb. 15, 2018, before me Rosa I Casas, a Notary Public, personally appeared Sean Scully 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.

Rosa I Casas
(Signature)



(Seal)

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 132-011-019

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF RIVERBANK, COUNTY OF STANISLAUS, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOTS 13, 14 AND 15 IN BLOCK 14 OF THE "TOWN OF RIVERBANK", ACCORDING TO THE REVISED MAP OF THE TOWN OF RIVERBANK, ACCORDING TO THE OFFICIAL MAP THEREOF, FILED IN THE OFFICE OF THE RECORDER OF STANISLAUS COUNTY, CALIFORNIA, ON OCTOBER 11, 1910 IN BOOK 5 OF MAPS, AT PAGE 16.

Grant Deed
SCA0000129.doc / Updated: 05.24.16

Printed: 11.02.16 @ 12:11 PM
CA-CT-FSST-02180.054511-FSST-5111602703

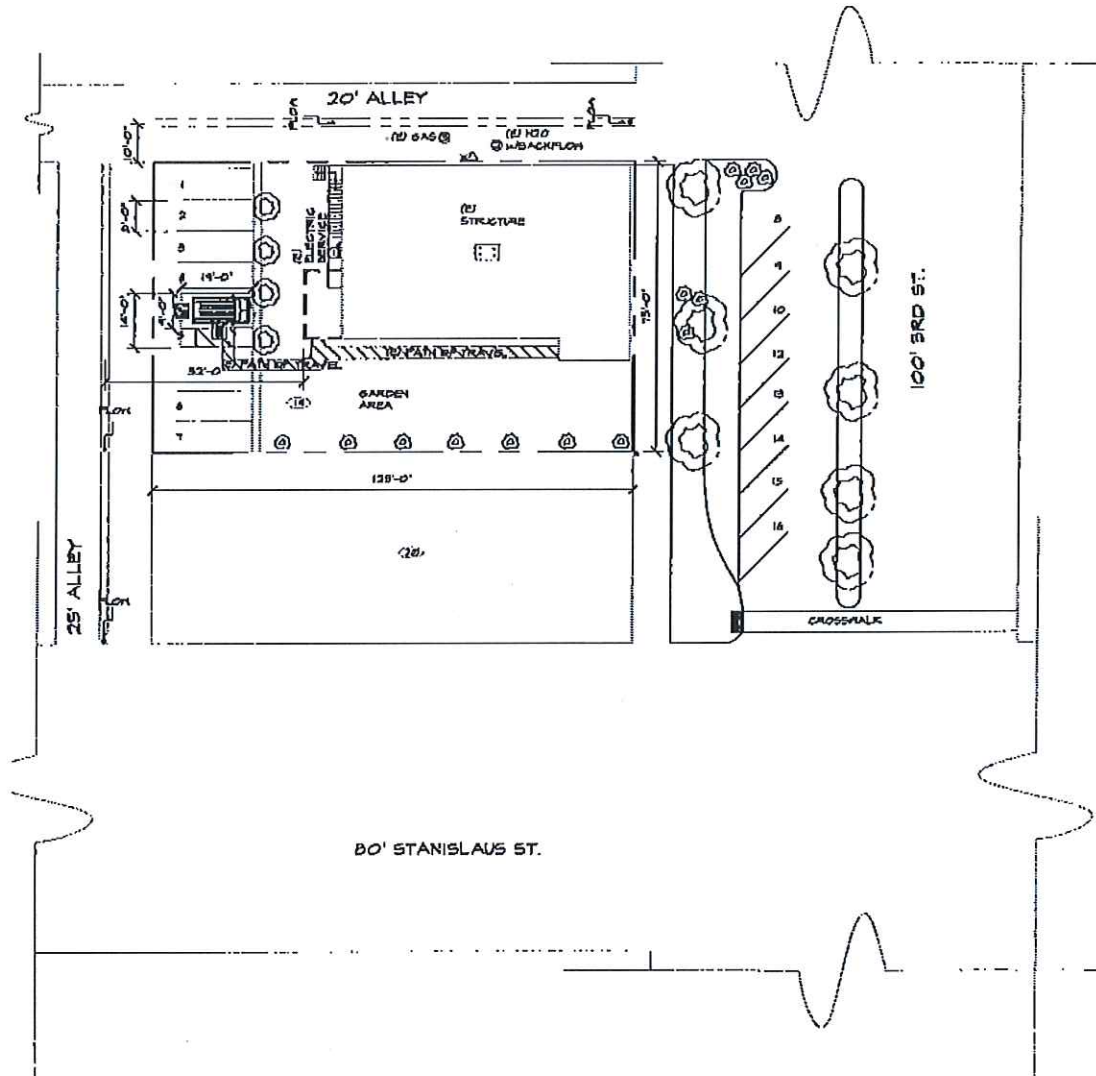
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DEVELOPMENT AGREEMENT
CITY OF RIVERBANK
& F.F.A. dba RIVERBANK CANNABIS COLLECTIVE

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Exhibit B



SITE MAP

SCALE: 1"=20'-0"

Exhibit C

LETTER OF INTENT

Property : 6609 3rd Street Riverbank Ca. 95367

Owner : GERMAN CHAVEZ ; MARIA ATTA

Tenant: F.F.A Doing Business As Riverbank Cannabis Collective whose headquarters is located at 725 30th Street #205 Sacramento Ca. 95816.

Building:

1. The tenant has decided to lease the lower level of the building. Which has a floor space of 3100 square feet.
2. Owner agrees to build out the building as the Architect David Vizcarra has designed. Building to have central heat and air conditioning.
3. All other work required for occupancy the tenant will be responsible for. All tenant improvements are at the tenants cost.

Schedule:

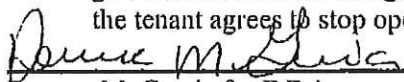
1. Application to the city of Riverbank allow time of 12 weeks for approval. (Jan 1. 2018)
2. Building drawings, building permits and city approval allow time of 8 weeks for approval (Dec 1. 2017)
3. Build out of lower level allow time of 10 weeks for building of lower level and passing of city inspections. Building ready to occupy. (Feb 1. 2018) or as soon as possible or as needed to be extended

Revenue:

1. Monthly rent of 1.25 per square foot (3,875.00) for the 1st six months starting on February 1, 2018 ending on July 31, 2018 . Monthly rent of 1.50 per square foot (4,650.00) starting on August 1, 2018 ending on January 31, 2019 . Monthly rent of 1.75 per square foot (5,425.00) starting on February 1, 2019 . The rent will increase by 3% every year for 5 years. On February 1, 2020 rent will be (5587.75) , February 1, 2021 (5755.38) , February 1, 2022 (5928.04) this will be a 7 year lease, after the seven year the loan will be renegotiable.
2. Security Deposit of 5,000.00 which is refundable if the city of Riverbank denies the application to run a cannabis dispensary for the location. The deposit to be given to the property owner at time of signing of letter of intent or the property lease witch ever is sooner.
3. Property owner shall be responsible to pay half of the property taxes and half of the property fire insurance. Tenant is responsible for paying all the water, sewer, and garbage starting February 1, 2018. After the 2nd story is rented out tenant will be responsible to pay half of the water, sewer and garbage. Tenants will pay all utilities.

Federal Cause:

1. In the event the U.S Department of Justice declares the sale of cannabis can not go on at this location and gives notice to the tenants and or the property owners the tenant agrees to stop operating right away and the lease will terminate.


Deanna M. Garcia for F.F.A

10-6-17
Dated

Exhibit D

Notice of Non-Performance Penalty

DATE: _____, 20__

PARTIES: CITY OF RIVERBANK, a California municipal corporation
6707 3rd Street
Riverbank, California 95367

F.F.A. dba Riverbank Cannabis Collective, a California corporation
725 30th Street #205
Sacramento, CA 95816

THIS NOTICE OF NON-PERFORMANCE PENALTY ("Penalty Notice") is being executed by the City of Riverbank, a California municipal corporation ("City"), with reference to the following.

- A. By Instrument No. _____, which was recorded in the Official Records of Stanislaus County, California on _____, 2018, City recorded a development agreement between City and F.F.A. dba Riverbank Cannabis Collective ("Developer"), dated January 9, 2018 (the "Development Agreement"), relating to the development and operation of a cannabis dispensary.
- B. Pursuant to Section 4.2 of the Development Agreement, Developer agrees to pay to City a Public Benefit on the first business day of each month during the term of the Development Agreement.
- C. On _____, 20__, the Public Benefit was due to City by Developer. City did not receive payment.
- D. Pursuant to Section 4.5 of the Development Agreement, if Developer fails to make payment when it is due, City may impose a penalty of one percent (1%) of the total of the past due amounts ("Penalty"). As of _____, 20__, the past due amount equals \$ _____. The Penalty owed by Developer equals \$ _____ ("Penalty Amount").
- E. Pursuant to Section 4.5 of the Development Agreement, Developer shall make payment of the Penalty Amount in a single installment due within fifteen (15) days of delivery of this Penalty Notice ("Penalty Due Date").

- F. Pursuant to Section 4.6 of the Development Agreement, if Developer fails to pay the Penalty Amount before the Penalty Due Date, then, in addition to the Penalty Amount specified in subdivision (D), Developer shall pay City interest on the Penalty Amount, at the rate of eighteen percent (18%) per annum ("Penalty Interest Payment"), computed from the Penalty Due Date specified in subdivision (E). The Penalty Interest Payment is due fifteen (15) days following delivery of the Penalty Due Date. As of _____, 20__, the Penalty Interest Payment amount equals \$_____.
- G. Nothing contained herein shall constitute a waiver of City's future claims for the Public Benefit, Penalty, or interest on the Penalty.

NOW, THEREFORE, City hereby provides Developer the Penalty Notice required by Section 4.5 of the Development Agreement. This Penalty Notice shall be effective upon notice pursuant to Section 10.3 of the Development Agreement.

CITY OF RIVERBANK,
a California municipal corporation

By: _____
City Manager

Exhibit E

INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING

THIS INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING ("Agreement") is made and entered into on this ____ day of _____ 20__ ("Effective Date"), by and between the City of Riverbank, a California municipal corporation ("City"), and F.F.A. Inc., a California corporation dba Riverbank Cannabis Collective ("Applicant"). City and Applicant may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. In 1996, the people of the state of California approved Proposition 215, the Compassionate Use Act of 1996 ("CUA"). The CUA enables seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law. In 2003, the California Legislature adopted Senate Bill 420, entitled the Medical Marijuana Program ("MMP"), which authorizes qualified patients and their primary caregivers to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code.

B. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

C. On November 8, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act ("AUMA"). AUMA legalizes the cultivation, commercial sale, and possession of recreational cannabis for adults age 21 and older.

D. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which created a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in the MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction.

E. Riverbank Municipal Code ("R.M.C.") Chapter 120 authorizes cannabis businesses to operate within the City under specified restrictions pursuant to a Cannabis Pilot Program.

F. Applicant intends to improve, develop, and use real property to operate a cannabis dispensary business within the City (the "Project") in strict compliance with MAUCRSA and R.M.C. chapter 120. Applicant must obtain certain land use entitlements including a Development Agreement and a Conditional Use Permit ("Land Use Entitlements") prior to initiating the Project.

G. Applicant has an agreement to purchase that certain real property located in the City, identified as Stanislaus County Assessor's Parcel Number 132-011-019 (the "Property"), shown on **Exhibit A** attached hereto ("Property Description").

H. As a condition of approval of the Land Use Entitlements, City has required Applicant to enter into this Agreement.

I. It is in the public interest for City and Applicant to enter into this Agreement, as Applicant will benefit from City's processing of the Project.

J. Applicant desires to enter into this Agreement to fulfill a condition of approval of the Project, which is a prerequisite for construction of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants and agreements set forth below, the Parties agree as follows:

Section 1. Recitals. The recitals set forth above ("Recitals") are true and correct and are hereby incorporated into and made part of this Agreement by this reference. In the event of any inconsistency between the Recitals and Sections 1 through 19 of this Agreement, Sections 1 through 19 shall prevail.

Section 2. Applicant's Indemnification Obligations.

2.1. Indemnification for Land Use Entitlements. To the fullest extent permitted by law, Applicant shall indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Land Use Entitlements by reason of the action or inaction of City, or City's Agents. Applicant's duty to indemnify and hold harmless shall not extend to any claim, action, or proceeding arising from the gross negligence or willful misconduct of City, or City's Agents.

Applicant's obligations under this Agreement to indemnify City shall apply to any claim, lawsuit, or challenge against City brought against the Project, specifically including, but not limited to, any legal challenge based on the California Environmental Quality Act, codified in California Public Resources Code section 21000 et seq.; actions or proceedings brought to challenge the validity of environmental documents prepared in conjunction with the approval of the Project or Land Use Entitlements, or the requirements of any other federal, state, or local laws, including, but not limited to, general plan, specific plan, and zoning requirements.

2.2. Tender of Defense. Upon receiving notice of a claim and pursuant to Article 6 of the Land Use Entitlements, Applicant shall assume the defense of the claim, action, or proceeding through the prompt payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action. Regardless of whether Applicant chooses to defend City pursuant to Section 6.4 of the Land Use Entitlements, City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, selecting counsel to defend City and settlement or other disposition of the matter.

2.3. Deposit for Costs. Applicant shall make a refundable deposit to City within thirty (30) days of written notification from City ("Cost Deposit"), to cover the estimated fees and costs associated with City's defense of any claim, action, or proceeding. Applicant shall make any and all additional payments to City to replenish the Cost Deposit within thirty (30) days of written notice from City.

2.4. Failure to Indemnify; Waiver. Failure to indemnify City, when required by this Agreement, shall constitute a material breach of this Agreement and of the Land Use Entitlements, which shall entitle City to all remedies available under law including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of the Land Use Entitlements. Applicant's failure to indemnify City shall be a waiver by Applicant of any right to proceed with the Project, or any portion thereof, and a waiver of Applicant's right to file a claim, action, or proceeding against City or City's Agents based on City's rescission or revocation of the Land Use Entitlements, or City's failure to defend any claim, action, or proceeding based on Applicant's failure to indemnify City.

2.5. Satisfaction of Judgment. With respect to any claims, demands, acts, causes of action, damages, costs, expenses, settlements, losses, or liabilities which Applicant has indemnified City against, Applicant shall pay and satisfy any judgment, award, settlement, or decree that may be rendered or agreed against City and City's Agents arising out of any final, non-appealable judicial or administrative action.

2.6. Payment of Costs and Fees. Applicant's obligations under this Agreement to defend and indemnify City shall include, but not be limited to, payment of all court costs and attorneys' fees, all litigation-related costs, all costs of any judgments or awards against City, or all settlement costs which arise out of City's processing or approval of the Project.

Section 3. City's Obligations. City shall notify Applicant of any claim, action, or proceeding within ten (10) business days of receiving service of any claim, action, or proceeding. If City fails to notify Applicant of any claim, action, or proceeding, Applicant shall not, thereafter, be responsible to defend, indemnify, or hold City harmless. City shall have and retain, in its sole discretion, the right to not participate in the defense of any claim, action, or proceeding. At its sole discretion, City may participate at its own expense in the defense, but such participation shall not relieve Applicant of any obligation imposed by this Agreement.

If to City: City of Riverbank
6707 3rd Street
Riverbank, California 95367
Attention: City Clerk

With copy to

City of Riverbank
6707 3rd Street
Riverbank, California 95367
Attn: City Manager
sscully@riverbank.org

and

Churchwell White, LLP
1414 K Street, 3rd Floor
Sacramento, California 95814
Attention: Douglas L. White, Esq.
doug@churchwellwhite.com

If to Applicant:

F.F.A. dba Riverbank Cannabis Collective
725 30th Street #205
Sacramento, CA 95816
Attn: _____

Section 5. Modification of Agreement. This Agreement may be supplemented, amended, or modified only by a writing signed by City and Applicant.

Section 6. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the action and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

Section 7. Agreement is Voluntary. The Parties acknowledge that they have entered into this Agreement voluntarily, on the basis of their own judgment and without coercion, and not in reliance on any promises, representations, or statements made by the other Party other than those contained in this Agreement. This Agreement incorporates the entire understanding of the Parties and recites the sole consideration of the promises and agreements contained within it. The Parties have read this Agreement and are fully aware of its contents and legal effect.

Section 8. Time of Essence. Time is of the essence for this Agreement, and each section contained within this Agreement is made and declared to be a material, necessary, and essential part of this Agreement.

Section 9. Severability of Agreement. If a court or an arbitrator of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be affected.

Section 10. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement, and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

Section 11. Noninterference. No Party will do anything to interfere with or inhibit the ability of the other to comply with their respective obligations under the terms of this Agreement.

Section 12. Ambiguities. Each Party has participated fully in the review and revision of this Agreement. Any rule of construction that ambiguities are to be resolved against the drafting Party does not apply in interpreting this Agreement.

Section 13. Headings. The headings in this Agreement are included for convenience only, and neither affect the construction or interpretation of any section in this Agreement nor affect any of the rights or obligations of the Parties to this Agreement.

Section 14. Necessary Acts and Further Assurances. The Parties shall, at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement. The Parties will act in good faith to carry out the intent of this Agreement.

Section 15. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 16. Venue. Venue for all legal proceedings shall be in the Superior Court of California, in and for the County of Stanislaus.

Section 17. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret sections of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

Section 18. Waiver. No covenant, term, or condition, or the breach thereof, shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any

waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

Section 19. Counterparts. This Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the Parties have executed this Agreement on the day, month and year first above written.

APPLICANT

F.F.A. dba Riverbank Cannabis Collective, a
California corporation

By: _____

Name: _____

Its: _____

Date: _____

CITY

City of Riverbank, a California municipal
corporation

By: _____

Sean Scully, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____

Douglas L. White, Deputy City Attorney

Exhibit F

Notice of Termination

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §
6103

NOTICE OF TERMINATION AND RELEASE OF DEVELOPMENT AGREEMENT

DATE: _____, 20__

PARTIES: CITY OF RIVERBANK, a California municipal corporation
6707 3rd Street
Riverbank, California 95367

F.F.A. dba Riverbank Cannabis Collective
725 30th Street #205
Sacramento, CA 95816

THIS NOTICE OF TERMINATION AND RELEASE (the "Release") is being executed by the City of Riverbank, a California municipal corporation ("City"), with reference to the following.

- A. By Instrument No. _____, which was recorded in the Official Records of Stanislaus County, California on _____, 20__, City recorded a development agreement between City and F.F.A. dba Riverbank Cannabis Collective ("Developer"), dated _____, 20__ (the "Development Agreement"), relating to the development and operation of a cannabis dispensary.
- B. Pursuant to Sections 1.7 and 9.1 of the Development Agreement, the term of the Development Agreement expires three (3) years from _____, 20__, on _____, 20__.

C. Pursuant to Section 9.1 of the Development Agreement, once terminated, the Development Agreement has no further force or effect, unless otherwise set forth in the Development Agreement.

NOW, THEREFORE, City hereby terminates, cancels, and otherwise releases Developer and Developer's heirs, executives, administrators, successors, and assigns from their obligations in the Development Agreement on this ____ day of _____, 20__, and relinquishes any right it may hereafter have to enforce any of the terms and provisions set forth in the Development Agreement, unless otherwise set forth in the Development Agreement. This termination, cancellation, and release shall be effective upon the recordation of this Release in the office of the County Recorder for the County of Stanislaus, State of California.

CITY OF RIVERBANK,
a California municipal corporation

By: _____
City Manager

Exhibit G

Assignment and Assumption Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE
Recording Fee Exempt per Government Code §
6103

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20__, by and between F.F.A., a California corporation doing business as Riverbank Cannabis Collective ("Developer"), and _____ ("Assignee"). Developer may be referred to herein as ("Assignor").

RECITALS

A. On _____, 20__, Assignor and the City of Riverbank ("City") entered into that certain agreement entitled "Development Agreement by and between the City of Riverbank, a California municipal corporation, and F.F.A., a California corporation doing business as Riverbank Cannabis Collective, relating to the improvement, development, and use of real property to operate a cannabis dispensary business (the "Development Agreement"), originally recorded upon Stanislaus County Assessor's Parcel Number 132-011-019 (the "Property").

B. Section 10.1 of the Development Agreement prohibits the sale, assignment, or transfer by Assignor of any portion of Assignor's interests, rights, or titles described in that section of the Development Agreement ("Assignable Rights") to a third party without prior written approval by the City Manager of the City of Riverbank (the "City Manager").

C. Assignor intends to assign, and Assignee intends to assume, the Assignable Rights under the Development Agreement.

D. In accordance with the terms of the Development Agreement, Assignor has provided to the City Manager a written request for consent to assignment. The City Manager has received the information he or she deems appropriate and consulted with the City Attorney for the purpose of determining that Assignee is a qualified applicant for purposes of the foregoing terms of the Development Agreement. This Agreement is intended to meet the requirements Section 10.1 of the Development Agreement for an Assignment and Assumption Agreement, and

is executed with the consent of the City Manager, as contemplated in the Development Agreement.

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

1. The foregoing Recitals are true and incorporated herein by this reference as though set forth in full.
2. Assignor hereby assigns to Assignee all of the Assignable Rights of Assignor under the Development Agreement.
3. Assignee hereby assumes all of the burdens and obligations of Assignor under the Development Agreement, and agrees to observe and fully perform all of the duties and obligations of Assignor under the Development Agreement, and to be subject to all the terms and conditions thereof, with respect to the Property and Assignable Rights. It is the express intention of Assignor and Assignee that, upon the execution of this Agreement, Assignee shall become substituted for Assignor as the "Developer" under the Development Agreement.
4. This Agreement shall take effect and be binding only upon the City Manager's consent to and approval of the Agreement.
5. Assignee represents and warrants that it has reviewed and is familiar with the terms and conditions of the Development Agreement. Assignee acknowledges that the Assignable Rights are as set forth in Section 10.1 of the Development Agreement, and the duties of Assignor thereunder and the duties of Assignee hereunder, as between Assignee and City, shall be without reference to any underlying agreements or understandings that may exist between Assignee, Assignor, or any other party with respect to the subject matter hereof, and that City is not party to such other agreements.
6. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

[Signatures on the following page]

ASSIGNOR / DEVELOPER:

F.F.A., a California corporation dba
RIVERBANK CANNABIS COLLECTIVE

Its: _____

ASSIGNEE

_____, a
California _____

By: _____

AGREED TO AND ACCEPTED:

CITY OF RIVERBANK
a California municipal corporation

City Manager

**CITY OF RIVERBANK
PLANNING COMMISSION
STAFF REPORT**

ITEM NO: 3.2 **June 15, 2021**

APPLICATION: **Tentative Map Application No. 01-2020 / Master Case No. 20-0011 – Riverbank Enclave – 4007 Kentucky Avenue (APNs: 062-022-026; 062-022-027).** The applicant submitted an application to subdivide two parcels totaling approximately 4.1 acres into eighteen (18) single-family detached residential lots (overall residential density 4.4 du/acre) with a storm drain basin, associated street, sewer, water, and storm drainage improvements.

OWNER: Emmanuel Rios Romero
1351 London Avenue
Manteca, CA 95336

APPLICANT: Peter Adiani, Bay Area Developers, LLC
6635 Dublin Boulevard, Suite B2
Dublin, CA 94568

ENGINEER: Bill Morris
334 S. Yosemite Avenue, Suite D
Oakdale, CA 95361

LOCATION/APN: The proposed project is located in the eastern area of Riverbank and on the northeast corner of Claus Road and Kentucky Avenue. The address is 4007 Kentucky Avenue. APNs: 062-022-026 and 062-022-027.

GENERAL PLAN: Current: Low Density Residential (LDR)
Proposed: Low Density Residential (LDR)

ZONING: Current: Single Family Residential (R-1)
Proposed: Single Family Residential (R-1)

ENVIRONMENTAL DETERMINATION: Pursuant to the California Environmental Quality Act, the proposed Tentative Map is exempt pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects.

PROJECT PLANNER: Gabriel R. Salazar, Associate Planner

RECOMMENDATION: Approval of Resolution No. 2021-011 (Attachment 1), recommending that the Planning Commission approves Tentative Map No. 01-2020 for the proposed subdivision located at 4007 Kentucky Avenue (APNs 062-022-026 and 062-022-027) based on the analysis presented and based on the findings in the General Plan for Riverbank Enclave.

ACRONYMS: CEQA – California Environmental Quality Act
DU – Dwelling Units
LDR – Low Density Residential
RMC – Riverbank Municipal Code
TM – Tentative Map

EXECUTIVE SUMMARY

The proposed project consists of Tentative Map 1-2020 (“TM”, Exhibit A) to subdivide two existing parcels (APNs 062-022-026 and 062-022-027) approximately 4.1± acres into eighteen (18) single-family residential lots with an overall density of 4.4 du/acre. The project site currently has a General Plan Land Use designation of Low Density Residential (LDR) and is currently zoned Single Family Residential (R-1). The applicant is applying for a Tentative Map consistent with the General Plan and Single-Family Residential Zoning Code. The subdivision will require Architecture and Site Plan Review for the house elevations, a Subdivision Improvement Agreement, and a Final Map.

BACKGROUND

The project is located in the eastern area of Riverbank and is bounded by Countryside 2, a 40-lot residential subdivision with improvements under construction to the north; future Countryside 3, a 22-lot residential subdivision to the east; a remainder parcel with a residential lot, and undeveloped pasture lands across Kentucky Avenue to the south; and residential units to the west. Kentucky Avenue borders the southern boundary and Claus Road borders the western boundary. The formal address of the proposed project site is 4007 Kentucky Avenue. The project site is comprised of an irrigated pasture with an existing residential unit and a shed structure, which will remain. There is a possibility of a parcel map in the future for the proposed basin.

One of the project’s parcels, APN 062-022-027, was previously entitled with several land-use approvals. On June 17, 2008, the Planning Commission approved Tentative Map No. 02-2006, Rezone Application No. 01-2006, Architecture and Site Plan Review No. 05-2006, and Development Plan 06-2006 to create 36 detached senior restricted units on a 3.5 acre parcel rezoned Planned Development. Subsequently, the City Council on

November 24, 2008 approved the project as well. The tentative map and additional project entitlement approvals have all since expired.

PROJECT ANALYSIS

A. Site Design

The design of the project as proposed is a standard small lot detached single family residential subdivision. The proposed lot sizes are consistent with the RMC R-1 standard of 6,000 square feet. The minimum lot size proposed is 6,003 square feet and the maximum lot size proposed is 7,664 square feet. All streets have been designed to accommodate City street designs with consideration of LID Standards as well as encouraging complete use of the streets by vehicles and pedestrians. Though streets appear narrow on paper, Stanislaus Consolidated Fire Department has determined the two cul-de-sacs will accommodate their turning radius. The proposed tentative map shows one (1) out lot. Lot A is a stormwater retention basin with a subsurface French drain system. Stormwater on the south side of Kentucky Avenue shall be managed with roadside swales and horizontal drains and connected to the stormwater system.

B. Architecture / Design Guidelines

The Applicant will be required to apply for Architecture and Site Plan Review for the proposed single-family residential units. This is required to ensure a high quality, aesthetically appealing, and safe subdivision with healthy vehicle circulation. When the future builder of the proposed project has been retained, they will be required to submit an Architecture and Site Plan Review application, of which the Planning Commission has final discretionary approval.

C. Transportation and Circulation

The City has required the applicant to improve portions of Claus Road and Kentucky Avenue, including the project's frontage, to be consistent with the City's Circulation Element Street Design Standards.

D. Low Impact Development (LID) Standards

The City developed LID guidelines due to storm water discharge standards implemented by the State of California through the MS4 permit process. The proposed project embraces the City's and State's LID guidelines. All project storm water will be collected and disposed of on-site through the use of a storm water detention basin. The project is required to annex into Community Facilities District (CFD) 2016-01 for the future maintenance of the storm water system as well as the streets, waste water, and water systems.

E. General Plan

General Plan Consistency Findings

The project site's density is 4.4 dwelling units per net acre. At this density, the Project is consistent with a General Plan designation of Low Density Residential (LDR, net density of 0-8 units per acre). Below is a discussion of General Plan Policies with which the proposed project is consistent or inconsistent:

1. Policy DESIGN-2.7

"In general, the City will require the construction of sidewalks on both sides of all new streets." *The applicant has provided sidewalks on both sides of all new proposed streets within the two cul-de-sac streets and the north side of Kentucky Avenue.*

2. Policy DESIGN-3.1

"The City will limit block lengths and encourage continuity of streets among neighborhoods to facilitate access, increase connectivity, and support safe pedestrian, bicyclist, and vehicular movement in residential neighborhoods." *The City is requiring the applicant to make improvements at the intersection of Clause Road and Kentucky Avenue in order to accommodate resident safety and support vehicular movements.*

3. Policy DESIGN-3.2

"Approved plans, projects, and subdivision requests shall provide residential site and building design that contributes to an attractive, pedestrian-friendly environment along neighborhood streets. Approved plans, projects and subdivision requests will minimize the visual prominence of garages and instead incorporate porches, stoops, active rooms, and functionally opening windows that face the street." *Architecture and Site Plan Review will be presented to the Planning Commission pending the purchase of the project site by a developer.*

4. Policy DESIGN-5.2

"The City will encourage the use of porches, stoops, and other elements that provide a place to comfortably linger and thereby provide 'eyes on the street,' helping to maintain a sense of security within neighborhoods." *The Planning Commission will review the proposed architectural details for the proposed project when the builder of the homes submits for Architecture and Site Plan Review.*

5. Policy CONS-4.2

“Approved projects, plans and subdivisions shall provide for collection, conveyance, treatment, detention, and other storm water management measures in a way that does not decrease water quality or alter hydrology in the Stanislaus River or associated groundwater recharge areas.” *The Developer has provided a stormwater basin within the project to keep the water on-site for percolation. He will be working with the City Engineer to ensure it is an appropriate size for the project. The developer is required to annex into Community Facilities District 01-2016 for future maintenance or replacement.*

F. Tentative Map

The Tentative Map proposes eighteen (18) buildable single family residential lots. Proposed street names will be reviewed by staff and outside agencies such as Fire and 911 to see if they are currently in use. Per RMC section 152.026 (L) all street names shall be approved by the City Council, which is done at Final Map approval. Duplication of existing names within the County will not be allowed unless the streets are obviously in alignment with existing streets and likely to sometime be a continuation of the other street.

Tentative Map Findings

A tentative map may be approved or conditionally approved by the Planning Commission if it makes all of the following findings:

1. The proposed map is consistent with applicable general and specific plans. *The proposed map is consistent with the General Plan if the recommended Conditions of Approval are adopted.*
2. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans. *The proposed map is consistent with the General Plan if the recommended Conditions of Approval are adopted as they relate to connectivity and sidewalks.*
3. The site is physically suitable for the type of development. *The site is suitable for a new subdivision of this type.*
4. The site is physically suitable for the proposed density of the development. *At 4.4 dwelling units per net acre, the site is physically suitable for a proposed density of 0-8 dwelling units per net acre.*
5. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitats. *The design of the subdivision should not injure fish, wildlife, or their habitats, none of which are present on the site.*

6. The design of the subdivision or the type of improvements is not likely to cause serious public health problems. *The design of the subdivision should not cause serious health problems.*
7. The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through, or use of, property within the proposed subdivision. In this connection, the City Council may approve a map if it finds that alternate easements for access or for use will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This division shall only apply to easements of record or to easements established by judgement of a court of competent jurisdiction. *The design of the subdivision should not conflict with any easements of record.*

G. Park-in-lieu Fee

Pursuant to RMC Section 11-3-12(c), the Project has an obligation to dedicate park land or pay a Park-in-lieu Fee. The developer has set aside land for a storm water basin but there is no recreational equipment proposed for a park. The obligation for this project is 0.16 acres to be paid based on values of land at the time the Final Map is recorded. A recent appraisal by another developer shows an acre of residential/park land is valued at \$130,000 per acre. Therefore, if this does not change by Final Map, the project will owe \$20,800 in park in-lieu fees for the 18 lots.

ENVIRONMENTAL DETERMINATION

The proposed Tentative Map is exempt from additional environmental analysis pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects. The project is consistent with the (a) General Plan and its (b) EIR, (c) existing utility services are available to serve the project, (d) the project has no wetlands or value as wildlife habitat, (e) the project site is not on any environmental clean-up list, (f) the site and surrounding properties do not have the potential of exposure to future residents of hazardous substances, (g) the project will not have a significant effect on historical resources, (h) the site is not within an earthquake fault zone or subject to wildland fires, landslides or flooding, (i) the site is not within a developed open space area, and (j) the site is not located within the boundaries of a state conservancy. Therefore, the project qualifies for this exemption.

PUBLIC NOTICE

On June 2, 2021, public notices for the Planning Commission hearing were mailed to interested parties and property owners (26) within 300 feet of the project location. The Planning Commission hearing notice was published in the Riverbank News on June 2, 2021 but was found to have a typographical error and subsequently edited and published in the Modesto Bee on Friday, June 4, 2021. The notice was posted on the City's website

and physically posted at City Hall North, South, the post office and sent to the library on June 2, 2021. The subject property public notice sign was posted on June 3, 2021.

ATTACHMENTS

1. Planning Commission Resolution No. 2021-011
Exhibit A – Tentative Map 1-2020

Respectfully Submitted By:

Gabriel R. Salazar

Gabriel R. Salazar
Associate Planner

City of Riverbank
Planning Commission
Resolution No. 2021-011

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
RIVERBANK RECOMMENDING APPROVAL OF THE REQUEST OF
BAY AREA DEVELOPERS, LLC FOR TENTATIVE MAP 01-2020 TO
SUBDIVIDE 4.1± ACRES INTO 18 SINGLE FAMILY RESIDENTIAL LOTS,
BASIN, AND A REMAINDER PARCEL LOCATED AT
4007 KENTUCKY AVENUE APN: 062-022-026 AND 062-022-027**

WHEREAS, an application has been received from Bay Area Developers, LLC, Peter Adiani, with a proposal to subdivide approximately 4.1± acres into eighteen (18) single family lots which allows for a net density of zero to eight (0-8) dwelling units per acre; and

WHEREAS, the City Subdivision Ordinance, Section 152.037 states that as a condition of approval of a tentative map, the subdivider shall dedicate and develop parkland, pay a fee in lieu thereof, or both, at the option of the City. In this case the City has chosen to accept the payment of an in-lieu fee for parkland dedication based on values of land at the time the Final Map is recorded. The obligation for this project is the value of 0.16 acres; and

WHEREAS, public facilities represent the public's investment in the development of the complex, urban infrastructure that is necessary to support the physical operation of the city; and

WHEREAS, the proposed tentative map is consistent with the following General Plan policies discussed in the staff report: DESIGN-2.7 (sidewalks), DESIGN-3.1 (continuity), DESIGN-3.2 (pedestrian-friendly), DESIGN 5.2 (eyes on the street), and CONS-4.2 (stormwater); and

WHEREAS, Tentative Map 01-2020 was reviewed by the Riverbank Planning Commission at a regular meeting held on June 15, 2021 in the manner prescribed by law; and

WHEREAS, The Riverbank Planning Commission recommends approval of the requested Tentative Map dated April 26, 2021, prepared by Morris Engineering & Surveying, Inc. and modified by adopted Conditions of Approval, and incorporated herein as a part of this Planning Commission Resolution; and

WHEREAS, The Planning Commission of the City of Riverbank hereby finds and adopts the following findings:

- A. The project is consistent with the General Plan with modification by the adopted conditions of approval.
- B. Notice to the general public and adjoining neighbors in the time and in the manner required by State Law and City Code was provided.

- C. The City finds that Pursuant to the California Environmental Quality Act, the proposed Tentative Map is exempt pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects.
- D. The approval of Tentative Map 01-2020 to divide parcels APN 062-022-026 and APN 022-026-027 of 4.1± acres, into 18 single family lots, a storm drain basin, and a remainder parcel, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood in that the project is similar to, and compatible with, neighboring uses in the area.

Whereas, the request for the Tentative Map is hereby recommended for conditional approval by the Planning Commission of the City of Riverbank, subject to and modified by the following conditions:

1. Applicant shall comply with the City of Riverbank Standard Conditions as contained in Planning Commission Resolution 2013-014, including annexing into Community Facilities District 2016-01, or receive confirmation from the Community Development Director that a specific condition or conditions does not apply to the subject project; and
2. The approval of TM 01-2020 for this site will invalidate all prior entitlements of TM 02-2006; and
3. Three (3) sets of landscape and irrigation plans conforming to the state's MWELo requirements shall be prepared and submitted with fee for review and approval by the City's contract landscape architect. The storm basin shall be fully landscaped and slope protection provided; and
4. Applicant shall pay an in-lieu fee for parkland dedication based on values of land at the time the Final Map is recorded. The obligation for this project is the value of 0.16 acres; and
5. The access to the remainder lot shall be from the new cul-de-sac and all access to Kentucky Avenue and Claus Road shall be relinquished; and
6. The project shall enter into a Subdivision Improvement Agreement with the City; and
7. Claus Road is required to be improved in accordance with City Standards; and
8. Kentucky Avenue shall be improved to a 30-foot half street with a 12-foot travel lane on the south; and
9. A 12-inch waterline in Kentucky Avenue is required to be connected at Central Avenue and tie into Claus Road; and
10. Storm water on the south side of Kentucky Avenue shall be managed with roadside swales and horizontal drains or connected to the storm system; and

11. All curb ramps need to be directional. Since no bid-block curb ramps are proposed the ramps shall face each other and match up with the cross walks. See Caltrans detail A-88-A; and
12. The existing drywells in Claus Road shall be abandoned and connected to a positive storm drain system; and
13. All wells and septic tanks shall be abandoned as a condition of map approval; and
14. The City's Post Construction Standards Plan needs to be followed including DMA's LID standards, and the required worksheets located in the Appendix of the document. The document is available on the City's website; and
15. The location of OID facilities shall be shown and any proposed relocation or improvements including easements; and
16. The storm drain basin is to be designed to City Standards and remain as a private system maintained by the CFD; and
17. A storm stub shall be provided from the proposed storm drain system across Claus Road to a future regional basin; and
18. All wet utilities are to be cleaned, tested, and videotaped prior to acceptance by the City of Riverbank; and
19. Street names shall be approved by City Council at Final Map approval; and
20. All overheard utilities shall be placed underground in a PUE; and
21. Approved fire apparatus access roads shall be provided for every facility, building, or portion of a building hereafter constructed or moved into the jurisdiction. All fire apparatus access roads shall meet the design requirements of the California Fire Code. **CFC 503.1.1**; and
22. During construction, Fire apparatus access roads shall be clearly marked with notices or markings that include the words NO PARKING – FIRE LANE. The markings shall be clean and legible at all times. **CFC 503.3**; and
23. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to the site. **CFC 507.1**; and
24. Fire apparatus access roads and a water supply for fire protection shall be installed and made serviceable prior to and during the time of construction. **CFC 501.4**; and
25. All exposed surfaces (e.g. parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two (2) times per day; and

26. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binding are used; and
27. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes. Clear signage shall be provided for construction workers at all access points; and
28. All construction equipment shall be maintained and properly tuned in accordance with manufacture's specifications. All equipment shall be checked by a certified visible emissions evaluator; and
29. Post a publicly visible sign with the telephone number and person to contact at the Air District regarding dust complaints. The Air District shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations; and
30. Applicant shall comply with San Joaquin Valley Air Pollution Control District's Rule 9510 Indirect Source Review.

NOW THEREFORE, BE IT RESOLVED that the City of Riverbank Planning Commission approves Tentative Map No. 01-2020 (**Exhibit A**), subject to these Conditions of Approval established by Resolution No. 2021-011 and to be recorded as modified.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 15th of June 2021, by the following vote ____:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

Approved:

Donna M. Kenney
Planning and Building Manager

Joan Stewart, Chairperson
Planning Commission

Exhibit A – Tentative Map 01-2020

