



CITY OF RIVERBANK
PLANNING COMMISSION HYBRID MEETING
(In-Person: Face Covering Required, and Virtual via ZOOM)
Tuesday, April 19, 2022 AT 6:00 P.M.

PLANNING COMMISSION AGENDA

TUESDAY, APRIL 19, 2022 – 6:00 P.M.

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

NOTICE: THIS MEETING WILL BE HELD IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 59453, SUBDIVISION (e) OF THE RALPH M. BROWN ACT (CALIFORNIA GC § 54950, ET SEQ.), THE FEDERAL AMERICANS WITH DISABILITIES ACT AND THE RECENT STANISLAUS COUNTY HEALTH OFFICER'S MANDATORY FACE COVERING ORDER (SEPT.2, 2021). WHILE THIS MEETING WILL BE PHYSICALLY OPEN TO THE PUBLIC, GIVEN THE STATE OF EMERGENCY REGARDING THE THREAT OF COVID-19, MEMBERS OF THE PUBLIC MAY ALSO PARTICIPATE AND COMMENT VIA THE ZOOM VIRTUAL PLATFORM. REFER TO THE LAST PAGE OF THE AGENDA FOR PARTICIPATION INFORMATION.

CALL TO ORDER: Chair: Steve Link

ROLL CALL: Chair: Steve Link
Vice Chair: Natasha Basso
Commissioner: John Dinan
Commissioner: Joan Stewart
Commissioner: Benjamin Reuben
Commissioner: Vacant, 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.

Item 2.1: Posting of the Agenda. The Agenda for the April 19, 2022 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 April 14, 2022.

Item 2.2: Approval of the April 19, 2022 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 _____

Item 2.3: Approval of the Minutes of the March 15, 2022 Planning Commission Meeting, having been read by the individual Commissioners and stands approved as submitted. *Abstain from voting: Commission Basso.*

Recommendation: Approval by roll call vote.

1st _____ 2nd _____

3. PLANNING COMMISSION PUBLIC HEARINGS

The public notice for Items 3.1, 3.2, and 3.3 was published on April 6, 2022 in the Riverbank News.

Item 3.1: **Conditional Use Permit 01-2022 (Dept. File #22-0005) – VARR, Inc., Pump House – 3301 Atchison Street (APN 132-004-045).** The applicant requests a CUP (License Type 47 – On-Sale General Eating Place) to serve alcohol, beer and wine at the new Pump House bar and grill. Property is located at 3301 Atchison Street, APN: 132-004-045. The proposed project will not have a significant effect on the environment and is categorically exempt under Article 19 Section 15332 (a-e) Infill Development.

Recommendation: Approve Resolution 2022-002 to approve the Conditional Use Permit to serve alcohol.

1st _____ 2nd _____

Item 3.2: **Development Agreement No. 03-2021 (Dept. File #21-0021) – SCM Hearthstone LLC, The Heritage Collection at Sierra Street Subdivision - 6448 Claus Road (APN 062-020-001).** The project consists of a Development Agreement for The Heritage Collection at Sierra Street subdivision project located at 6448 Claus Road (APN 062-020-001). The project site has a General Plan Land Use Designation of Medium Density Residential (MDR) and is zoned Planned Development (PD). The adoption of a Development Agreement is exempt from environmental review because it is not a project within the meaning of Section 15378 of the State CEQA Guidelines.

Recommendation: Approve Resolution 2022-003 to recommend approval of the Development Agreement to the City Council.

1st _____ 2nd _____

Item 3.3: **General Plan Amendment 01-2021 and Rezone 02-2021 (Dept. File #21-0024) – Pocket Avenue Senior Apartment Complex – 3318 Pocket Avenue (APN 075-090-063).** The applicant requests a General Plan Amendment to modify the existing Low Density Residential (LDR) land-use designation to High Density Residential (HDR) and to rezone the existing Single Family Residential (R-1) site to Planned Development (PD) for a proposed 40-unit senior apartment complex on 2.01 acres. The subject site is 3318 Pocket Avenue. Pursuant to the California Environmental Quality Act, the proposed Project is exempt pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects.

Recommendation: Approve Resolution 2022-004 to recommend approval of the GPA and Resolution 2022-005 to recommend approval of the Rezone to the City Council.

1st _____ 2nd _____

4. PLANNING COMMISSION COMMENTS

None.

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

None.

6. STAFF COMMENTS (Information Only – No Action)

None.

**7. ADJOURNMENT
Next Regular Planning Commission meeting – May 17, 2022 @ 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 14th day of April, 2022

/s/ *Janet Smullen, Sr. CDB, 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 cityclerk@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. (Exception: When a State statute requires that at a public hearing that includes a substantial number of the population that are not able to speak or understand English, the City should provide interpreters. This determination is left at the discretion of the City.)

GENERAL INFORMATION

MEETING SCHEDULE: The 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 open to the public Monday through Thursday, 7:30 am – 5:30 pm.

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

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 immediately made available for public inspection at the City Clerk's Office, 6707 Third Street, Suite A, Riverbank, CA, during normal business hours and posted on the City's Planning Commission agenda webpage <http://www.riverbank.org/agendacenter>.



PUBLIC PARTICIPATION PROCEDURES FOR THE PLANNING COMMISSION MEETINGS HELD IN A IN CONFORMANCE WITH THE BROWN ACT AS AMENDED BY SB 361

PUBLIC “LIVE” VIEWING

- Charter Government Channel – 2
- AT&T U-VERSE Government Channel – 99
- Via ZOOM Platform (See instructions below)

SUBMITTING PUBLIC COMMENTS

Written Comments via Mail 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.** on the day of the meeting. To ensure receipt call the Manager at (209) 863-7124.)

Written Comments via Email to cityclerk@riverbank.org:

- Written comments must be received **by 4:00 p.m.** on the day of the meeting (Indicate Agenda Item # in the ***subject line.***) Comments received will not be read aloud at the meeting, however, will be made part of the record and distributed to the Planning Commission prior to consideration of the matter.
- Technology is not a 100% proven communication tool; therefore, you are asked to call the Planning and Building Manager at (209) 863-7124 to verify receipt of your comments.

Join via ZOOM Platform:

- ***Learn about using ZOOM*** - Visit <https://support.zoom.us/hc/en-us/categories/201146643>
- 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/85397650954>
 - Join by accessing website: <https://zoom.us/join>
 - **Webinar ID:853-9765-0954**
 - Join by telephone:**1 669 900 9128 or 1 346 248 7799, plus Webinar ID**

ORAL COMMENTS VIA ZOOM: The Chair will announce when public comments may be made for the agenda item being considered, 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** – press ***9** to “raise the hand”.
 - Once you confirm that you want to be unmuted, your 3 minutes will begin for you to make your comments.

ORAL COMMENTS IN-PERSON: The Chair will ask the audience if anyone wishes to comment, at that time you may approach the podium.



City of Riverbank
Planning Commission Meeting
City Hall North • Council Chambers
6707 Third Street • Suite B • Riverbank • CA 95367

MINUTES
Tuesday, March 15, 2022
(In-Person, and Virtual via ZOOM)

The following minutes reflect action minutes, with added clarification for the record. A copy of the verbatim recording may be obtained, if available, for a fee by contacting the Development Services Department at (209) 863-7128.

CALL TO ORDER/ROLL CALL:

Present: Chair Stewart, Commissioners: Link, Dinan, Stewart and Reuben (Alternate)

Absent: Mallorie Fenrich and Natasha Basso (Excused Absence)

CONFLICT OF INTEREST: Any Planning Commissioner and Staff who would have a direct Conflict of Interest on any scheduled agenda item to be considered are to declare their conflict.

No one declared a conflict.

1. PUBLIC COMMENTS (No action to 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. 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.

- 1. Jamie Aggers stated that she is against the proposed River Walk Project.*
- 2. Bernard Aggers stated that he is against the proposed River Walk Project.*
- 3. Karen Controtto is against the River Walk Project.*
- 4. Libby Longstreth is against the River Walk Project.*

2. CONSENT CALENDAR

All items on the Consent Calendar are to be acted upon by a single action of the Planning Commission unless otherwise requested by an individual Planning Commissioner for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

Item 2.1: Posting of the Agenda. The Agenda for the March 15, 2022, 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 February 3, 2022.

Item 2.2: Approval of the March 15, 2022 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.

ACTION: *By motion moved/second (Dinan / Link / passed 4-0) was approved as submitted; Motion carried by unanimous roll call vote.*

Ayes: Planning Commissioners: Stewart, Dinan, Link, Reuben (Alternate)

Nays: None

Absent: Commissioner Fenrich & Basso

Abstained: None

3. PLANNING COMMISSION PROCEDURES

Item 3.1: Annual Nomination and Appointment of Chair and Vice Chair – Per Planning Commission Rules and Procedures. Current order is: Chair Stewart, Vice Chair Link, Commissioner Basso, Commissioner Dinan, and Commissioner Fenrich.

ACTION: *By motion moved/second (Dinan / Stewart passed 4-0); motion carried by unanimous roll call vote to nominate Steve Link as Chair and Natasha Basso as Vice Chair.*

Ayes: Planning Commissioners: Stewart, Link, Dinan, and Alternate Rueben

Nays: None

Absent: Commissioner Fenrich & Basso

Abstained: None

4. PLANNING COMMISSION PRESENTATIONS – NO ACTION

Item 4.1: **Presentation on Environmental Justice Program** – Planning Commission to receive a report from Zoe Jonick of Civic Spark on the Environmental Justice Element as part of the General Plan Update process.

- Zoe Jonick of Civic Spark presented the PowerPoint via Zoom on item 4.1.
- Commissioner Dinan asked Zoe Jonick a few questions.

Item 4.2: **Presentation of Annual General Plan and Housing Element Report**

- Gabriel Salazar, Associate Planner presented the PowerPoint item 4.2.
- Commissioner Dinan commented on presentation as he is also a member of the Stanislaus County Commission on Aging.

5. PUBLIC HEARING PRESENTATIONS

The public notice for Items 5.1 and 5.2 were published on March 2, 2022 in the Riverbank News.

Item 5.1: ZONING ORDINANCE AMENDMENT 01-2022 – An Ordinance Amending Title XV: Land Usage, Chapter 153: Zoning, by Repealing in their Entirety Section 153.215: Zoning permits, Section 153.216: Use permits, Section 153.217: Variance, Section 153.218: Appeals, and Section 153.219: Mobile home permits, and substituting them with new Sections and adding new Sections 153.210 through 153.214.

The proposed Ordinance amendment is to update the City's Administrative Procedures as it relates to processing planning entitlement applications, such as Conditional Use Permits, Variances, Appeals, etc. The proposed Ordinance amendment will update the supportive information required for application submittal, the review procedure for all entitlement applications, public hearing notice procedures, and add architecture and site plan review and zoning ordinance amendment procedures to the City's Zoning Code.

The proposed project is exempt from analysis under the California Environmental Quality Act (CEQA) under the "Common Sense Exemption" that CEQA applies only to projects that have the potential for causing significant environmental effects, as specified in Section 15061(b)(3).

- David Niskanen with JB Anderson Land Use Planning, presented item 5.1.
- Donna M. Kenney, Planning and Building Manager informed the Commission that this is part of the SB2 Grant in updating outdated items in our Ordinance.
- Chair Link opened the public hearing at 6:59 p.m. With there being no comments the public hearing was closed.

ACTION: *By motion moved/second (Dinan / Stewart / passed 4-0); motion carried by unanimous roll call vote. Approval of #Resolution 2022-001 to recommend approval of the Ordinance to City Council.*

Ayes: Planning Commissioners: Link, Stewart, Dinan, and Alternate Rueben

Nays: None

Absent: Commissioner Fenrich & Basso

Abstained: None

Item 5.2: Pocket Senior Housing Project General Plan Amendment and Rezone

Staff unfortunately found a public notice irregularity. To ensure the project is in strict conformance with State public noticing laws, staff will re-notice this item and place it on the April 19, 2022 agenda.

6. PLANNING COMMISSION COMMENTS

- Commission Stewart, asked why we don't see two to three story commercial buildings.
- Donna M. Kenney, Planning & Building Manager, explained that the cost is much more and that the Fire Dept. would have to have a different type of fire engine that could reach the taller heights.

7. COUNTY REFERRAL/CORRESPONDENCE/INFORMATION (Information Only – No Action

None

8. STAFF COMMENTS (Information Only – NO ACTION

- Donna M. Kenney mentioned that the city recently had the Centennial Gala and that they had a great turnout and that the city has more activities coming up for the community to attend.

7. ADJOURNMENT - Regular Planning Commission Meeting – April 19, 2022 @ 6:00 p.m.

ATTEST:

Donna M. Kenney

Donna M. Kenney
Planning and Building Manager

APPROVED:

Steve Link

Steve Link
Chair Planning Commission



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: April 6, 2022	TO LEGAL: March 30, 2022
DEPT.: Planning	Riverbank News

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

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Riverbank will conduct a **hybrid** Commission meeting, and hold a public hearing on **Tuesday, April 19, 2022 at 6:00 p.m.** or soon thereafter as practical via the Zoom virtual platform and in-person attendance in the City Council Chambers at 6707 Third Street, Suite B, Riverbank, CA. This meeting will be held in accordance with the Brown Act amendment (AB 361) in regards to teleconference/virtual public meeting requirements, the Governor's "reopening" orders, and the recent California Department of Public Health COVID orders (all of which are subject to change before the meeting date). This public hearing is to consider the following matters:

General Plan Amendment 01-2021 and Rezone 02-2021 (Dept. File #21-0024) – Pocket Avenue Senior Apartment Complex – 3318 Pocket Avenue (APN 075-090-063). The applicant requests a General Plan Amendment to modify the existing Low Density Residential (LDR) land-use designation to Higher Density Residential (HDR) and to rezone the existing Single Family Residential (R-1) site to Planned Development (PD) for a proposed 40-unit Senior Apartment Complex on 2.01 acres. The subject site is 3318 Pocket Avenue. Pursuant to the California Environmental Quality Act, the proposed Project is exempt pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects.

Conditional Use Permit 01-2022 (Dept. File #22-0005) – VARR, Inc., Pump House – 3301 Atchison Street (APN 132-004-045). The applicant requests a CUP (License Type 47 – On-Sale General Eating Place) to serve alcohol, beer and wine at the new Pump House bar and grill. Property is located at 3301 Atchison Street, APN: 132-004-045. The proposed project will not have a significant effect on the environment and is categorically exempt under Article 19 Section 15332 (a-e) Infill Development.

Development Agreement No. 03-2021 (Dept. File #21-0021) – SCM Hearthstone LLC, The Heritage Collection at Sierra Street Subdivision - 6448 Claus Road (APN 062-020-001). The project consists of a Development Agreement for The Heritage Collection at Sierra Street subdivision project located at 6448 Claus Road (APN 062-020-001). The project site has a General Plan Land Use Designation of Medium Density Residential (MDR) and is zoned Planned Development (PD). The adoption of a Development Agreement is exempt from environmental review because it is not a project within the meaning of Section 15378 of the State CEQA Guidelines.

Planning Commission (Hybrid) Meeting
April 19, 2022 at 6:00 pm
City Hall Council Chambers - 6707 Third St., Suite B - Riverbank, California

REPORT AVAILABILITY: Public materials pertaining to the presentation of the subject matter are made available as part of the agenda packet at <http://www.riverbank.org/AgendaCenter> upon distribution to a majority of the Planning Commission, (72 hours prior to the meeting), and may be viewed at the City Clerk's Office, 6707 Third St., Suite A, Riverbank, during normal business hours.

ALL INTERESTED PERSONS are invited to participate in this public meeting to express views or submit evidence for or against the subject matter being considered. Comments are not accepted via telephone. The following submission of comments are accepted for the record.

Written Comments Prior to the Meeting. Written comments may be delivered in-person to the City of Riverbank, City Clerk's Office, 6707 Third St., Suite A, Riverbank, 95367. Written comments submitted via email to dkenney@riverbank.org or via Mail Delivery Service requires a follow up phone call to (209) 863-7124 for verification of receipt by staff. All written comments must be received by the City Clerk **no later than 4:00 p.m. on the day of the meeting.** Comments received by the deadline will be distributed to the Planning Commission for consideration and will be made part of the official record, but will not be read aloud during the meeting.

Oral Comments Via ZOOM or In-Person During the Meeting. Oral comments may be made at the time the Chair officially opens the hearing for public comment and in the order as called upon by the Chair. Via In-Person: Public attendees in the Council Chambers may approach the podium upon the Chair's request to do so. Via Zoom: The public participation and comment 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>.

TECHNICAL DIFFICULTIES: In accordance with the amended Brown Act, if there is a disruption of the meeting broadcast, or in the ability to take call-in or internet based public comment during the conduct of the meeting, the Planning Commission will recess until the issue is resolved, or may adjourn the remainder of the agenda business to a stated time and place, which allows the current meeting to be continued.

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.

Questions regarding the proposed subject matter may be made to Planning and Building Manager Donna Kenney at (209) 863-7124 or email dkenney@riverbank.org or email the City Clerk. Questions in regards to meeting procedures contact the City Clerk (209) 863-7198 or by call the Administration Dept. at (209) 863-7122 prior to 4:00 p.m. on the day of the meeting.

Published this 6th day of April 2022.

/s/ Donna M. Kenney, Planning and Building Manager, City of Riverbank

AFFIDAVIT OF POSTING		
I, Donna M. Kenney, 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 6th of April 2022.		
/s/ Donna M. Kenney, Planning and Building Manager, Riverbank, CA		

For official use only:

Posted: 4/6/2022	Published: 4/6/2022	Remove: 4/7/2022
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**PUBLIC NOTICE
NOTICE OF PUBLIC HEARING
CITY OF RIVERBANK PLANNING
COMMISSION**

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Riverbank will

conduct a hybrid Commission meeting, and hold a public hearing on Tuesday, April 19, 2022

at 6:00 p.m. or soon thereafter as practical via the Zoom virtual platform and in-person

attendance in the City Council Chambers at 6707 Third Street, Suite B, Riverbank, CA. This

meeting will be held in accordance with the Brown Act amendment (AB 361) in regards to

teleconference/virtual public meeting requirements, the Governor's "reopening" orders, and the

recent California Department of Public Health COVID orders (all of which are subject to change

before the meeting date). This public hearing is to consider the following matters:

General Plan Amendment 01-2021 and Rezone 02-2021 (Dept. File #21-0024) – Pocket Avenue

Senior Apartment Complex – 3318 Pocket Avenue (APN 075-090-063). The applicant requests a

General Plan Amendment to modify the existing Low Density Residential (LDR) land-use designation

to Higher Density Residential (HDR) and to rezone the existing Single Family Residential (R-1) site to

Planned Development (PD) for a proposed 40-unit Senior Apartment Complex on 2.01 acres. The

subject site is 3318 Pocket Avenue. Pursuant to the California Environmental Quality Act, the proposed

Project is exempt pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing

Projects. Conditional Use Permit 01-2022 (Dept. File #22-0005) – VARR, Inc., Pump House – 3301 Atchison

Street (APN 132-004-045). The applicant requests a CUP (License Type 47 – On-Sale General Eating

Place) to serve alcohol, beer and wine at the new Pump House bar and grill. Property is located at 3301

Atchison Street, APN: 132-004-045. The proposed project will not have a significant effect on the

environment and is categorically exempt under Article 19 Section 15332 (a-e) Infill Development.

Development Agreement No. 03-2021 (Dept. File #21-0021) – SCM Hearthstone LLC, The Heritage

Collection at Sierra Street Subdivision - 6448 Claus Road (APN 062-020-001). The project consists

of a Development Agreement for The Heritage Collection at Sierra Street subdivision project located at

6448 Claus Road (APN 062-020-001). The project site has a General Plan Land Use Designation of

Medium Density Residential (MDR) and is zoned Planned Development (PD). The adoption of a

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from environmental review because it is not a project within the meaning of Section 15378 of the State CEQA Guidelines.

Planning Commission (Hybrid) Meeting
April 19, 2022 at 6:00 pm
City Hall Council Chambers - 6707 Third St., Suite B - Riverbank, California
City of Riverbank
6707 Third Street ☒ Riverbank CA 95367
Office: (209) 863-7128 ☒ FAX: (209) 869-7126

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distribution to a majority of the Planning Commission, (72 hours prior to the meeting), and may be viewed at the City Clerk's Office, 6707 Third St., Suite A, Riverbank, during normal business hours.

ALL INTERESTED PERSONS are invited to participate in this public meeting to express views or

submit evidence for or against the subject matter being considered. Comments are not accepted via telephone. The following submission of comments are accepted for the record.

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of Riverbank, City Clerk's Office, 6707 Third St., Suite A, Riverbank, 95367. Written comments

submitted via email to dkenney@riverbank.org or via Mail Delivery Service requires a follow up phone

call to (209) 863-7124 for verification of receipt by staff. All written comments must be received by the

City Clerk no later than 4:00 p.m. on the day of the meeting. Comments received by the deadline

will be distributed to the Planning Commission for consideration and will be made part of the official record, but will not be read aloud during the meeting.

Oral Comments Via ZOOM or In-Person During the Meeting. Oral comments may be made at the

time the Chair officially opens the hearing for public comment and in the order as called upon by the

Chair. Via In-Person: Public attendees in the Council Chambers may approach the podium upon the

Chair's request to do so. Via Zoom: The public participation and comment procedures are provided on

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may adjourn the remainder of the agenda business to a stated time and

place, which allows the current meeting to be continued.

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Donna Kenney at (209) 863-7124 or email dkenney@riverbank.org or email the City Clerk. Questions

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Dept. at (209) 863-7122 prior to 4:00 p.m. on the day of the meeting.

Published this 6th day of April 2022.

/s/ Donna M. Kenney, Planning and Building Manager, City of Riverbank

Apr. 6, 2022

RN #22-025

**CITY OF RIVERBANK
PLANNING COMMISSION
STAFF REPORT**

Agenda Item No. 3.1

April 19, 2022

APPLICATION:	<u>Conditional Use Permit 01-2022 (Dept. File #22-0005) – VARR, Inc., Pump House – 3301 Atchison Street (APN 132-004-045).</u> The applicant requests a CUP (License Type 47 – On-Sale General Eating Place) to serve alcohol, beer and wine at the new Pump House bar and grill. Property is located at 3301 Atchison Street, APN: 132-004-045.
LOCATION:	3310 Atchison Street APN: 132-004-045 Northeast corner of Third and Atchison Streets
GENERAL PLAN:	Mixed Use (MU)
ZONING:	Downtown Specific Plan (DTSP) – Downtown Core (DC)
ENVIRONMENTAL DETERMINATION:	The proposed project will not have a significant effect on the environment and is categorically exempt under Article 19 Section 15332 (a-e) Infill Development.
PROJECT PLANNER:	Donna M. Kenney, Planning & Building Manager
RECOMMENDATION:	Conditionally approve the sale of alcoholic beverages for on-premises consumption within a full-service restaurant with patio seating.
ACROMYMS:	ABC – Alcoholic Beverage Control CEQA – California Environmental Quality Act CUP – Conditional Use Permit RMC – Riverbank Municipal Code SF or sf – Square Feet or Foot

I. EXECUTIVE SUMMARY:

The applicant, Pump House Restaurant, is seeking a Conditional Use Permit to allow the sale and on-site consumption of beer, wine, and distilled spirits in a full-service restaurant with outdoor patio. (License Type 47). With proper conditions addressing the sale of alcoholic beverages and properly trained staff, the use is not anticipated to impact neighboring uses.

II. BACKGROUND AND ANALYSIS:

The General Plan designation of the site where the Pump House Restaurant will be located is Mixed Use (MU) and the zoning is Downtown Core (DC) in the Downtown Specific Plan (DTSP). Areas with the MU General Plan designation are anticipated to accommodate neighborhood-scale retail uses, offices, personal and commercial services and similar land uses. Similarly, the DC zoning district permits uses which support a vibrant, walkable, and diverse environment for shopping, strolling, dining, and entertainment. These uses would include eating establishments, specialty food sales (such as bakeries, cheese shops, ice cream shops, and wine shops), specialty retail (such as flowers, books, skateboard shops, and sporting goods), beauty salons and barber shops, dance studios, and dog groomers to name a few examples. These areas are located along major roadways such as Third Street, Atchison Street, Santa Fe Street, and on the periphery of existing and planned neighborhoods.

Under DTSP Section 2.2.2, eating and drinking establishments which want a license to sell alcoholic beverages for on-site consumption are required to obtain a conditional use permit (CUP). Type 47 Licenses allow the on-site sale and consumption of beer, wine and distilled spirits. Various restaurants in the City along Atchison Street and Patterson Roads, such as El Ranchito, Cool Hand Luke's and El Rosal, have Type 47 licenses. Type 41 licenses allow the on-site sale and consumption of beer and wine only. Various locations on Atchison & Patterson Road such as Lucky House and the Galaxy Theater have Type 41 licenses. Pump House Restaurant is requesting a Type 47 license.

Pump House Restaurant is located in the Downtown Specific Plan area at 3301 Atchison Street (Attachment 2). The restaurant intends to sell American style food with drinks, including beer, wine, and distilled spirits. The restaurant is anticipating 100-150 customers per day. There are fifteen parking spaces onsite and additional street parking on Third Street. The Downtown Specific Plan allows street parking to be used within 800 feet of a business. The restaurant is approximately 2,520 square feet total in size and the dining/patio area where alcohol would also be served is approximately 2,180 square feet (Attachment 3). The business plans to be open Monday through Sunday from 10:00 a.m. to 10:00 p.m. The restaurant anticipates having twenty total employees, six employees per shift. Live acoustic music is permitted under this permit. Background music shall be subdued out-of-doors. Neighbor complaints may result in fines and a prohibition of outdoor music.

The property and business owner Toby Von Alvensleben, is local to the area as is his partner Randy Rocha, who has owned the Tap Room in Modesto since 2003 and previously owned the Twisted Pig. Toby has owned the building for several years and now has the opportunity to open a restaurant locally and to contribute to the economic activity in Riverbank. An approval of a Conditional Use Permit is expected to enhance the dining experience for guests and encourage visitors to the area.

III. ENVIRONMENTAL DETERMINATION:

The project will have minimal impact upon the environment and meets all applicable criteria to qualify as categorically exempt from further review under CEQA. The project meets the criteria of Article 19

Categorical Exemptions 15332 (a-e) In-Fill Development Projects. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.

IV. PUBLIC NOTICE:

The Planning Commission public hearing notice was published in the Riverbank News on April 6, 2022. It was posted at City Halls North and South, the Community Center, and the Post Office on April 4, 2022 and was emailed to the library on that same day. Public notices were mailed to residents and businesses within 300 feet of the project site on April 4, 2022 in accordance with standard City practice. In addition, the applicant posted a Notice of Development Permit Application at 3301 Atchison Street on March 29, 2022. At the time of the writing this staff report (April 14, 2022), the City had received one written public comment in favor of the restaurant and the issuance of the CUP (Attachment 4). Any written comments received by the City after the agenda is posted will be provided to the Planning Commission on the day of the meeting.

V. RECOMMENDATION:

Find that the project is categorically exempt under Article 19 Section 15332 (a-e), and approve the Conditional Use Permit pursuant to the performance standards and conditions contained in attached Resolution 2022-002.

VI. ATTACHMENTS:

1. Planning Commission Resolution No. 2022-002
2. Site Plan
3. Floor Plan
4. Public Comment Letter received 4-7-22

Respectfully Submitted By:

Donna M. Kenney

Donna M. Kenney
Planning & Building Manager

**City of Riverbank
Planning Commission
Resolution No. 2022-002**

A Resolution of the Planning Commission of the City of Riverbank Approving a Conditional Use Permit for the Sale of Alcoholic Beverages for On Premises Consumption (Type 47 License) for the Pump House Restaurant Located at 3301 Atchison Street, APN: 132-004-045.

Whereas, the proposed sale of permitted alcoholic beverages is located within the City of Riverbank at 3301 Atchison Street (APN: 132-004-045); and

Whereas, the property has a General Plan designation of Mixed Use (MU) and is zoned Downtown Core (DC) in the Downtown Specific Plan (DTSP); and

Whereas, areas with the MU General Plan designation are anticipated to accommodate neighborhood-scale retail uses, offices, personal and commercial services and similar land uses during the buildout of the General Plan; and

Whereas, the DC zoning district permits uses which support a vibrant, walkable, and diverse environment for shopping, strolling, dining, and entertainment; and

Whereas, Section 2.2.2 Land Use Categories of the DTSP requires a Conditional Use Permit (CUP) be obtained for eating and drinking establishments serving alcoholic beverages; and

Whereas, the proposed conditional use permit for 3301 Atchison Street will allow beer, wine, and distilled spirit sales within a full-service restaurant; and

Whereas, this CUP shall permit alcoholic beverages both inside the restaurant (approximately 2,520 sf) and outdoors in the new patio area (approximately 2,180 sf); and

Whereas, the City of Riverbank has had an undue concentration of licenses for the retailing of alcoholic beverages in the past; and

Whereas, compliance with the conditions of this use permit is expected to mitigate impacts created by the retail sale of alcoholic beverages and will further the public convenience by providing the sale of alcoholic beverages within a commercial area.

Therefore, Be It Resolved by the Planning Commission of the City of Riverbank that it hereby approves a conditional use permit to allow the sale of beer, wine, and distilled spirits for on-site consumption at Pump House Restaurant, subject to the following performance standards in RMC §153.364:

1. That the activity does not result in adverse effects to the health, peace, or safety of persons residing or working in the surrounding area.
2. That it does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area.

3. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, lewd conduct, or police detention and arrests.
4. That it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance, or statute.
5. That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

Therefore, Be It Further Resolved by the Planning Commission that it hereby approves the conditional use permit, subject to the following conditions:

1. Applicant shall comply with the City of Riverbank Standard Conditions as contained in the Planning Commission Resolution 2013-014 and/or receive confirmation from the Community Development Director that a specific condition or conditions does not apply to the subject project.
2. The operator shall operate and abide under all conditions of the State of California Alcoholic Beverage Control Type 47 License, On-Sale General - Eating Place, in a full-service restaurant and its outdoor patio area.
3. Alcoholic beverages shall not be sold to underage minors pursuant to state and federal laws. The offering of sale of such will result in the automatic review and possible suspension of this use permit.
4. This use permit shall be enacted in accordance with the time limit prescribed in Section 153.216(E)(3) of the City's Municipal Code.
5. This use permit is subject to a periodic review to monitor potential problems and for possible corrective action of the Department.
6. No variance from any City of Riverbank adopted code, policy or specification is granted or implied by the approval of this resolution.
7. Live acoustic music is permitted under this permit. Background music shall be subdued out-of-doors. Neighbor complaints may result in fines and a prohibition of outdoor music.
8. Externally advertising or promoting specific or individual beer, wine, and/or distilled spirits, including, but not limited to, flags, A-frames, banners, lawn signs, windows, and exterior wall signage is prohibited.
9. The restaurant shall be assessed an additional \$250 annually during the routine annual business license renewal process to offset DUI police enforcement activities.

Passed and adopted by the Planning Commission of the City of Riverbank at a regular meeting held on the 19th day of April 2022, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Attest:

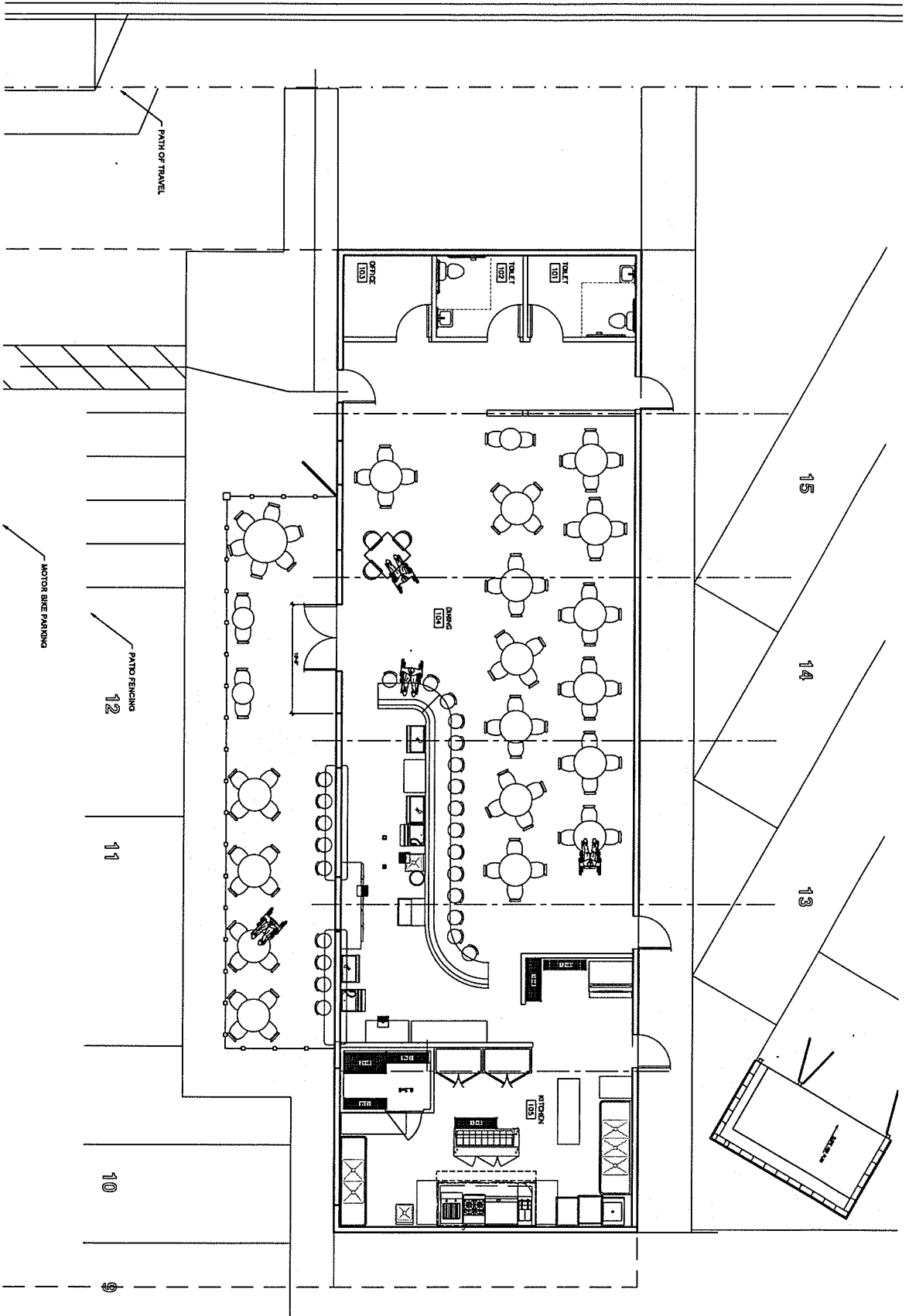
Approved:

Donna M. Kenney, Secretary
Planning and Building Manager

Steve Link, Chairperson
Planning Commission

18 FURNISHED FLOOR PLAN

Sheet



KASTNER
 1000 S. 10TH AVE.
 RIVERBANK, CA 95637
 916.444.1111
 www.kastner.com

APN: 133-004-045



PROJECT TITLE
 PROJECT NUMBER
 PROJECT ADDRESS
 PROJECT CITY
 PROJECT STATE

PROJECT NUMBER
 PROJECT ADDRESS
 PROJECT CITY
 PROJECT STATE

PROJECT NUMBER
 PROJECT ADDRESS
 PROJECT CITY
 PROJECT STATE

**PUMP HOUSE
 TENANT IMPROVEMENT
 3301 ATCHISON STREET
 RIVERBANK, CA 95637**

POWERED PLAN

CUP-3
 of 1

4/7/2022

RE: Varr, Inc. Pump House – CUP 01-2022

To Whom It May Concern:

Please accept this letter as confirmation of our support for the application for the Conditional Use Permit submitted by Varr, Inc., Pump House.

The building, as it currently stands, has been an eye sore for years and we are excited that someone is finally interested in occupying it and making use of the space. Riverbank has such a beautiful downtown area but the vacant properties along Hwy 108 / Atchison Street take away from the beauty and potential of this town. We're seeing more people drawn here from surrounding areas to visit Get Toasted, Snow White, etc. and I believe the Pump House will just add to the appeal and draw consumers downtown.

We're so excited to be able to watch this little town grow. We've really appreciated the gem this town is and are happy to know others see the benefit in adding to the growth and development as well.

Sincerely,

Nicole K. Aldridge

Nicole Aldridge

**CITY OF RIVERBANK
PLANNING COMMISSION
STAFF REPORT**

ITEM NO: 3.2

April 19, 2022

APPLICATION: **Development Agreement No. 03-2021 (Dept. File #21-0021) – SCM Hearthstone LLC, The Heritage Collection at Sierra Street Subdivision - 6448 Claus Road (APN 062-020-001).** The project consists of a Development Agreement for The Heritage Collection at Sierra Street subdivision project (12.27 acres) located at 6448 Claus Road (APN 062-020-001).

OWNER: SCM Hearthstone LLC
1920 Standiford Avenue, Suite 1
Modesto, CA 95350

APPLICANT: SCM Hearthstone LLC
1920 Standiford Avenue, Suite 1
Modesto, CA 95350

ENGINEER: Jim Freitas
Associated Engineering Group, Inc.
4206 Technology Drive, Suite 4
Modesto, CA 95356

LOCATION/APN: The proposed project is located in Riverbank and bounded by Sierra Street to the North, Central Avenue to the East, railroad tracks and Patterson Road to the South, and vacant land/proposed mini storage facility to the West. The address is 6448 Claus Road (APN: 062-020-001).

GENERAL PLAN: Medium Density Residential (MDR)

ZONING: Planned Development (PD)

ENVIRONMENTAL DETERMINATION: The adoption of a Development Agreement is exempt from environmental review because it is not a project within the meaning of Section 15378 of the State CEQA Guidelines.

PROJECT PLANNER: Donna M. Kenney, Planning and Building Manager

RECOMMENDATION: Approve Resolution No. 2022-003 (Attachment 1), recommending that the City Council approve Ordinance No. 2022-XXX for a Development Agreement which extends the life of approved The Heritage Collection at Sierra Street Tentative Map 01-2021 relating to real property located at 6448 Claus Road (APN: 062-020-001).

ACRONYMS: CEQA – California Environmental Quality Act
DA – Development Agreement
MDR – Medium Density Residential
PD – Planned Development
TM – Tentative Map

EXECUTIVE SUMMARY

The proposed project consists of a Development Agreement (“DA”), which extends the life of TM 01-2021 of a forty-seven (47) lot single-family residential subdivision with an overall density of 8.13 du/net acre. The project site currently has a General Plan Land Use designation of Medium Density Residential (MDR) and is zoned Planned Development (PD).

BACKGROUND

The project site of The Heritage Collection at Sierra Street (“Heritage”) is situated on the eastern side of Riverbank and is bounded by the Diamond Bar West subdivision to the north; ranchettes to the east; the railroad tracks to the south with Riverbank High School across Patterson Road; and a vacant parcel to the west with single-family residential across Claus Road. The formal address of the proposed project site is 6448 Claus Road. The project site is vacant with no improvements of value. Riverbank High School is located south of the site across Patterson Road. Before 2021, the subject parcel had a General Plan designation of Community Commercial (CC) with General Commercial (C-2) zoning.

A. Tentative Map 01-2021

Tentative Map 01-2021 is a small lot single-family residential subdivision. The lot sizes are less than the R-1 zone standard size of 6,000 square feet; therefore, the property was approved in 2021 for a rezone to PD which accommodates the smaller lots. The lots range in size from 3,662 square feet to 6,743 square feet. The map area is part of a

Tentative Map 01-2021 first approved by the Planning Commission on August 17, 2021 and then by the City Council on September 28, 2021 (after they approved the Rezone request). The following findings were made by both bodies:

1. The proposed map is consistent with applicable general and specific plans. *The proposed map is consistent with the General Plan if the adopted Conditions of Approval remain.*
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 approved Conditions of Approval which relate to connectivity, sidewalks, and the provision of amenities remain.*
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. *The site is physically suitable for a proposed density of 8-16 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.*

B. Architecture and Site Plan Review

The Architecture and Site Plan Review for The Heritage was approved by the Planning Commission on August 17, 2021 pursuant to Section 153.095 (G) of the City of Riverbank Code of Ordinances. The design of the project is a small lot, compact, detached single-family residential subdivision. The proposed lot sizes vary. The typical minimum interior lot size dimensions are 40 feet by 80 feet. The typical minimum corner lot size dimensions are 45 feet by 80 feet. The minimum lot size proposed for the subdivision is 3,720 square feet and the maximum lot size proposed is 6,743 square feet. There are four (4) floor plan models, two (2) architecture types: Craftsman and Cottage, and six (6) color schemes.

C. Transportation and Circulation

The Heritage project is required to improve portions of Sierra Street and Central Avenue to be consistent with the City's Circulation Element Street Design Standards.

D. Stormwater Basin

The City developed LID guidelines due to storm water discharge standards implemented by the State of California through the MS4 permit process. The Heritage property owner intends to enter into an agreement with the developer of Diamond Bar East to use their stormwater basin to be located at the corner of Snedigar Road and Patterson Road, just north of the railroad tracks. This will be accomplished by running stormwater pipes east to the basin, using an acquired easement in future Sierra Street. The basin will be a dual use basin with a walking path/exercise stations along the rim and a shade structure with picnic tables, grills, and enhanced landscaping.

E. 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 not set aside land for a park so must pay the fee. The obligation for this project is 0.43 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 \$55,900 in park in-lieu fees for the forty-seven (47) houses (\$1,140 per unit).

Development Agreement

A. Term

A development agreement vests the rights of the developer. The term of the Development Agreement is five (5) years unless the agreement is terminated, modified, or extended. The developer may request to extend the term of the agreement one time for the length

of five (5) years. The City Council may approve the extension which would then be recorded on the property in the official records of Stanislaus County.

B. System Development Fees

Developer shall pay all fees subject to the Mitigation Fee Act, Government Code section 66000 *et seq.*, including System Development Fees, impact fees, connection fees, public facilities fees or similar fees adopted by the City, and all other fees imposed as conditions of approval of the Property. City and Developer have agreed in concept to System Development Fee credits attributable to Developer.

ENVIRONMENTAL DETERMINATION

The adoption of a Development Agreement is exempt from environmental review because it is not a project within the meaning of Section 15378 of the State CEQA Guidelines. All Mitigations and Conditions of Approval on the project will continue to apply during the life of the proposed Development Agreement.

PUBLIC NOTICE

On April 4, 2022, public notices for the Planning Commission hearing were mailed to interested parties and property owners within 300 feet of the project location. The Planning Commission hearing notice was placed on the City's website on April 4, 2022. It was also posted at City Hall North, South, the post office and sent to the library on April 4, 2022. The subject property was posted by the applicant on April 5, 2022. The public notice was published in the Riverbank News on April 6, 2022.

ATTACHMENTS

Attachment 1 - Planning Commission Resolution No. 2022-003

Exhibit A – The Heritage Collection at Sierra Street Development Agreement

Exhibit B – Draft Ordinance No. 2022-XXX

Respectfully Submitted By:

Donna M. Kenney
Donna M. Kenney
Planning and Building Manager

**City of Riverbank
Planning Commission
Resolution No. 2022-003**

**A Resolution of the Planning Commission of the City of Riverbank ("City"),
Recommending that the City Council Adopt an Ordinance
Approving a Development Agreement by and Between the
City of Riverbank and SCM Hearthstone, LLC for
The Heritage Collection at Sierra Street Subdivision (APN 062-020-001)**

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; and

WHEREAS, the Riverbank City Attorney and City staff have negotiated a development agreement ("Development Agreement") with SCM Hearthstone, LLC ("SCM"), to provide SCM with a vested right to develop 47 single-family residential lots on approximately 12.27 acres in connection with the project known as The Heritage Collection at Sierra Street ("The Heritage" or "Project"), and to extend the life of Tentative Map 01-2021 relating to the Project; and

WHEREAS, the Development Agreement provides a vested right for SCM to improve, develop, and use real property to develop 47 single family residential lots within The Heritage as defined in the Development Agreement; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) environmental impacts relating to the Project were evaluated in the Notice of Exemption (CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects) when the City Council approved a Rezone to Planned Development and Tentative Map for the Project on September 28, 2021. Pursuant to CEQA Guidelines Section 15378, the Development Agreement is within the purview of The Heritage Project, for which environmental impacts have already been reviewed. Thus, approval of the Development Agreement does not require further environmental review; and

WHEREAS, the Planning Commission held a duly noticed public hearing on April 19, 2022 to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, the Planning Commission finds the Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the City's General Plan; and

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

ATTACHMENT 1

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

THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Riverbank that it hereby recommends City Council approval of Ordinance No. 2022-XXX, approving the Development Agreement (Exhibit "A") between the City of Riverbank and SCM Hearthstone LLC, attached hereto as Exhibit "B" and incorporated herein by this reference.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 19th day of April 2022; motioned by Commissioner _____, seconded by Commissioner _____, and upon roll call was carried by the following Planning Commission vote of ____-____:

AYES: Commissioners:

NAYS:

ABSENT:

ABSTAIN:

Attest:

Approved:

Donna M. Kenney, Secretary
Planning and Building Manager

Steve Link, Chair
Planning Commission

EXHIBIT A

Development Agreement

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

City of Riverbank
6707 Third Street
Riverbank, CA 95367
Attn: City Clerk

Recording fees exempt (Gov. Code §§ 6103, 27383)

(Space above line for recorder's use only)

APN: 062-020-001

DEVELOPMENT AGREEMENT BY AND BETWEEN THE

CITY OF RIVERBANK

AND

SCM HEARTHSTONE, LLC

RELATING TO THE DEVELOPMENT KNOWN AS THE

“The Heritage Collection at Sierra Street”

Adopted by City Council Ordinance No. 2022-____
on _____, 2022

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the CITY OF RIVERBANK, a California municipal corporation (“City”) and SCM Hearthstone, LLC (“Developer”). Developer and City may hereinafter be referred to individually as a “Party” and collectively as the “Parties”. There are no other parties to this Agreement.

This Agreement is made with reference to the following facts:

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Government Code section 65864 *et seq.* (the “Development Agreement Statute”), which authorizes the City to enter into a development agreement with any persons and entities having a legal or equitable interest in real property, to provide for the development of such property and establish certain development rights therein. The Parties acknowledge on their own behalf that each has: (i) negotiated the terms and conditions of this Agreement in good faith; (ii) extensively reviewed the terms and conditions of this Agreement; and (iii) found the terms and conditions of this Agreement to be fair, just and reasonable. Additionally, City acknowledges that this Agreement is consistent with City’s General Plan and that buildout of the Project, including the Infrastructure Improvements, in accordance with this Agreement, will provide substantial benefits to City furthering important public health, safety and welfare interests while eliminating uncertainty in planning, and facilitating progressive installation of necessary Infrastructure Improvements to serve the Project.

B. Pursuant to the Development Agreement Statute, the City Council has adopted rules and regulations for considering and processing development agreements. This Agreement has been processed, considered, and executed in accordance with those City rules and regulations.

C. Developer represents that, as of the recordation of this Agreement, it will have a legal or equitable interest to land consisting of approximately 12.27 acres, as shown on the tentative map attached hereto as **Exhibit A**, and legally described in **Exhibit B** (the “Property”).

D. In addition to this Agreement and the consolidated conditions of approval as attached and incorporated hereto as **Exhibit C** (“Conditions of Approval”), the Property is subject to the following land use plans and entitlements (“Project Approvals”):

(i) On September 28, 2021, the City Council adopted Ordinance No. 2021-006, to approve a Rezone for the project site (APN 062-020-001) from General Commercial (C-2) to Planned Development (PD);

(ii) On September 14, 2021, the City Council adopted Resolution No. 2021-084, approving Tentative Subdivision Map 01-2020 (“The Heritage Collection at Sierra Street Tentative Map”, “The Heritage Map”) and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately 47 residential lots on 12.27 acres;

(iii) On August 17, 2021, the Planning Commission adopted Resolution No. 2021-017 approving Architecture and Site Plan Review 02-2021 for the site plan and elevations for The Heritage Collection at Sierra Street.

E. The City finds that Pursuant to the California Environmental Quality Act, the Project’s forty-seven (47) residential lots are 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. The City has determined as an exempt project under CEQA, no further environmental review is required on the residential lots.

F. Developer has proposed to develop the Property into forty-seven (47) residential lots, and related public improvements in conformance with the provisions of this Agreement and the Project Approvals (the “Project”).

G. Subsequent to the approval of this Agreement, City and Developer understand that additional land use approvals, entitlements and permits may be necessary to implement the Project (“Subsequent Approvals”). The Subsequent Approvals will include, but may not be limited to, a System Development Fee Reimbursement Agreement, a draft copy of which is attached hereto for reference as **Exhibit D**. As the Developer will be financing or completing all Improvements prior to recordation of Final Map, the Parties hereby agree that a Subdivision Improvement Agreement is not required.

H. Pursuant to Government Code Section 65867.5, the City finds that development of the Project in accordance with this Agreement, the Project Approvals and Subsequent Approvals will provide for orderly growth within the City consistent with the goals, policies, and provisions of the General Plan.

I. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Project pursuant to the Project Approvals, Developer seeks assurance that it may proceed with development of the Project in accordance with the terms and conditions of this Agreement.

J. The City shall maintain all documents mentioned in this Agreement and place them in a three-ring binder, to be maintained at all times by the Development Services Department.

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

ARTICLE 1 DEFINITIONS

The following defined terms in this Agreement shall have the meanings set forth below:

1.01. “Agreement” means this Development Agreement entered into by and between the City and Developer relating to the development known as “The Heritage Collection at Sierra Street”.

1.02. “City” shall mean the City of Riverbank, a California municipal corporation.

1.03. “City Council” shall mean the City Council of the City of Riverbank.

1.04. “City Code” shall mean the Riverbank Municipal Code.

1.05. “Conditions of Approval” shall mean the consolidated conditions of approval for the Project, attached, and incorporated hereto as **Exhibit C**.

1.06. “Developer” shall mean, SCM Hearthstone, LLC, and may include Developer’s assignees where such assignment is validly made pursuant to this Agreement.

1.07. “Effective Date” shall mean the earliest date on which the following have both occurred: (a) the thirtieth (30th) day following the adoption by the City Council of the ordinance approving this Agreement, and (b) execution of this Agreement by both Parties.

1.08. “Facilities Districts” or “CFDs” or “CFD 2016-01” shall mean that Mello-Roos Community Facilities District that Developer shall annex into for the purpose of facilitating the long-term maintenance of public improvements serving the Property.

1.09. “General Plan” shall mean the 2005-2025 Riverbank General Plan, as amended.

1.10. “Growth Control Measure” shall mean any ordinance, resolution, minute order, policy, moratorium, rule, regulation, decision, standard or any other action taken by the City other than pursuant to voter initiative or referendum, which would otherwise be applicable to the Project, and which would (a) limit or restrict the number of building permits issued by the City for the Project; (b) limit or restrict the Project’s ability to connect to the City’s sewer system, water system, storm drainage system or any other City service; (c) alter the Project Approvals without consent of Developer, (d) limit the number of final occupancies issued by the City; or (e) any combination of the foregoing.

1.11. “Improvements” shall mean those water, sewer, storm drainage and traffic improvements identified in the Tentative Map and this Agreement.

1.12. “Landowner” shall mean the record owner of any legal parcel of the Property, whether one or more persons or entities, of fee simple title to any Unit including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; provided, however, that Landowner shall mean and include any person or entity which is a security holder in actual possession of a Unit.

1.13. “Planning Commission” shall mean the Planning Commission of the City of Riverbank.

1.14. “Project” shall mean the land uses, densities and improvements to the Property as depicted in the Project Approvals.

1.15. “Property” shall mean 12.27 acres of real property in the City of Riverbank and the County of Stanislaus, State of California, as shown on the Tentative Map in **Exhibit A**.

1.16. “Heritage Tentative Map” shall refer to the Tentative Subdivision Map for the Project, as approved by the City Council on September 14, 2021 by Resolution No. 2021-084, attached and incorporated hereto as **Exhibit A**, which may be amended from time to time in compliance with this Agreement.

1.17. “Subsequent Approvals” shall mean those approvals necessary to implement the Project Approvals that have not been conferred as of the Effective Date of this Agreement.

1.18. “System Development Fees” or “SDF” shall mean the City’s capital facility programs and impact fee schedule adopted pursuant to Government Code section 66000 *et seq.*

1.19. “Unit” shall mean a single family residential detached dwelling to be constructed on the land pursuant to the Project Approvals.

ARTICLE 2 GENERAL PROVISIONS

2.01. Findings. The City hereby finds and determines that entering into this Agreement will further the public health, safety and general welfare of the City and that the provisions of this Agreement are consistent with the City’s General Plan.

2.02. 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, however, between the Recitals and Articles 1 through 10 of this Agreement, Articles 1 through 10 shall prevail.

2.03. Exhibits. The following exhibits, as they may be amended from time to time, are attached hereto and incorporated as part of this Agreement (the “Exhibits”):

- | | |
|------------|--|
| Exhibit A: | The Heritage Collection at Sierra Street Tentative Map |
| Exhibit B: | Legal Description of Property |
| Exhibit C: | Conditions of Approval |
| Exhibit D: | Draft System Development Fee Reimbursement Agreement |
| Exhibit E: | System Development Fee Charts |

Exhibit F: Draft Assumption and Assignment Agreement

2.04. Property Description and Binding Covenants. Developer represents that they have a legal or equitable interest in the Property and that all other persons holding legal or equitable interests in the Property (excepting owners or claimants in easements) agree to be bound by this Agreement. The Parties intend and determine that the provisions of this Agreement shall constitute covenants which shall run with said Property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the Parties hereto.

2.05. Term.

(a) Term. This Agreement shall only become effective upon commencement of the Effective Date and shall extend for period of five (5) years thereafter (“Term”), unless said Term is terminated, modified or extended pursuant to this Agreement. Following the expiration of said Term, this Agreement shall be deemed terminated and of no further force and effect.

(b) Extension. Developer may request to extend the Term of the Agreement one time for the length of five (5) years. The City Council may approve a one-time extension. If approved, the extension shall be recorded on the Property in the official records of Stanislaus County.

(c) Termination. This Agreement shall automatically terminate with respect to any residentially zoned parcel of the Property that receives a final inspection in connection with the construction of a residential unit, provided that all improvements required to serve the parcel, as determined by City, have been accepted by City. Although such termination will be automatic, Developer or a then-existing Landowner may request that the City record a written notice of termination with the County Recorder for the applicable parcel. Termination of this Agreement for any such residential parcel shall in no way be construed to terminate or modify any assessment district, CFD, or lien previously recorded against such parcel at the time of termination.

(d) Tolling During Legal Challenge. In the event that this Agreement, or any of the Project Approvals are subjected to legal challenge by a third party, and Developer is unable to or elects not to proceed with the Project due to such litigation, the City may, in its sole discretion, toll the term of and timing for obligations imposed pursuant to this Agreement, provided that Developer must request, and if agreeable the City must provide, in writing, the terms of such tolling and any other timing considerations necessary to facilitate the tolling of this Agreement.

2.06. Amendment. This Agreement may be amended by mutual written consent of the Parties, in accordance with the provisions of Government Code sections 65867 and 65868 and this Agreement.

(a) Major Amendment. Any amendment to this Development Agreement which affects or relates to permitted uses of the Project, the density or intensity of land uses on the Property or neighboring properties or land uses, or any other material change, shall be deemed a “Major Amendment” and shall require noticed public hearings before both the Planning Commission and City Council. The City Manager, in his or her sole discretion, shall determine whether a proposed amendment constitutes a material change necessitating a Major Amendment.

(b) Minor Amendment. The Parties acknowledge that refinement and further implementation of the Project may demonstrate that minor changes to this Agreement may be appropriate with respect to the details and performance of the Parties. The Parties desire to retain flexibility with respect to the details of the Project and with respect to items covered by the general terms of this Agreement. If the City Manager finds that clarifications, minor changes or minor adjustments are necessary or appropriate and do not constitute a Major Amendment, the Parties may effectuate such clarifications, minor changes and adjustments in a “Minor Amendment” approved in writing by Developer and the City Manager. Unless otherwise required by law, a Minor Amendment shall not require noticed public hearings

2.07. Recordation. Once fully executed, this Agreement and any subsequent amendment or termination shall be recorded in the official records of Stanislaus County within ten (10) days after City executes such agreement, amendment or termination. Any amendment or termination of the Agreement that affects less than all of the Property shall clearly describe the portion thereof that is the subject of such amendment or termination.

ARTICLE 3 DEVELOPMENT OF THE PROPERTY

3.01. Vested Rights of Developer. By developing the Property consistent with the Project during the Term of this Agreement, Developer is assured, and City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, including without limitation, the terms and conditions in the attached Exhibits and the Project Approvals are fully vested in Developer.

3.02. Permitted Uses. The Project’s permitted uses, density and intensity of use, maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, location of public improvements and utilities, payment of fees, and other terms and conditions of development applicable to the Project shall be those set forth in this Agreement and the Project Approvals. Project Approvals shall not be changed without the approval of the City and Developer, except as provided herein.

3.03. Priority of Enactment. The Parties intend that this Agreement, together with the Project Approvals, shall serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to the development of the Project. In the event of conflict between various 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: (1) the Development Agreement; (2) the Project Approvals; (3) the General Plan; and (4) the ordinances, resolutions, policies and regulations adopted by the City in effect on the Effective Date including the ordinances governing the permitted uses of land, the density and intensity of uses, the timing of development, and the design, improvement, construction standards, policies and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the zoning ordinance and all other ordinances, codes, rules, policies and regulations of the City.

3.04. Character Design. Each home built as part of the Project shall conform to the Community and Character Design elements of the General Plan, specifically the policies of Goal

Design-3, 4, and 5. The design of each home shall comply with Architecture and Site Plan Review 02-2021, approved by the Planning Commission on August 17, 2021.

3.05 Improvement Standards. The Project shall comply with all improvement standards and specifications of the City, including street cross-sections, storm drainage, water, sewer, and drought tolerant landscape standards, which exist at the time that a site plan application is submitted to the City.

3.06 Storm Water Impact Standards. The Project shall adhere to the Low Impact Development Model Standards and Specifications as adopted by the City in January, 2013. The project shall comply with the most current MS4 program elements imposed by the State of California and City Ordinance.

3.07 Subdivision Maps.

(a) Time Period for Tentative Map. As provided in Government Code section 66452.6, the term of The Heritage Collection at Sierra Street Tentative Map is hereby extended so that it will remain valid through the Term of this Agreement. The Project Approvals shall also remain valid through the Term of this Agreement, notwithstanding any condition of approval or any other provision of the Project Approvals to the contrary.

(b) Dedication of Public Lands. This Agreement shall have no effect on dedication requirements and procedures under the Subdivision Map Act (Gov. Code § 66410 *et seq.*)

3.08 Changes to Existing Land Use Regulations. The Parties acknowledge that the following changes to existing laws, ordinances and regulations shall apply to the development standards of the Project:

(a) No Growth Control Measure. Except as expressly provided in this Section or other provisions of this Agreement, no Growth Control Measure shall be applicable to the Project, any portion or phase of the Project, or this Agreement.

(b) Changes Mandated by Federal or State Law. As provided in section 65869.5 of the Development Agreement Statute, this Agreement shall be modified or suspended as necessary to comply with state or federal laws or regulations enacted after the Effective Date, which prevent or preclude compliance with one or more provisions of this Agreement. Upon discovery of a subsequently enacted and conflicting state or federal law, 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 City Law 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. In such discussions, City 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 state or federal law and that such proposed changes shall be deemed to be consistent with this Agreement without further need for any amendment to this Agreement or the Project Approvals.

(c) Construction and Technical Design Standards. Development of the Project shall be subject to changes occurring from time to time to the California Building Code, California Fire Code and subsequent citywide changes to construction or technical design standards or specifications for public improvements which are reasonably and directly related to durability or longevity of the public improvements.

(d) Other Public Agencies. The Parties acknowledge that other public agencies outside of the control and authority of the City may regulate aspects of the development of the Project. This Agreement does not limit the authority of any such public agency. To the extent Developer requires permits or approvals from other public agencies, however, City agrees to cooperate with Developer to obtain such permits and approvals for the Project.

(e) 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, to address such emergency in a way that does not have a material adverse impact on the Project in accordance with the Project Approvals and any Subsequent Approvals. If City determines that it is not reasonably possible to address the health and safety emergency in a way that avoids any material adverse impact on the Project, City, after consultation with Developer, shall select an option for addressing the situation that minimizes, so far as reasonably possible, the impact on development of the Project.

(f) Initiatives and Moratoria. Notwithstanding any other provision of this Agreement, the Project shall be subject to any initiative or referendum that specifically overturns City's approval of the Project Approvals, and any growth limitation ordinance, resolution, rule, regulation, policy or moratorium that is adopted and applied on a uniform, city-wide basis and directly concerns an imminent public health or safety issue. In such case, City shall apply such ordinance, resolution, rule, regulation or policy uniformly, equitably and proportionately to Developer and the Property and to all other public or private owners and properties directly affected thereby. By way of example only, an ordinance which would preclude the issuance of a building permit due to a city-wide lack of adequate sewage treatment capacity to meet additional demand would directly concern an imminent public health issue under the terms of this paragraph and would support a denial of a building permit within the Project or anywhere else in the City if approval would require additional sewage treatment capacity.

(g) City Ordinances of General Applicability. The City may apply to the Project any subsequently enacted ordinances, only if all of the following conditions apply: (i) such subsequently enacted ordinances or guidelines have general applicability to all other relevant parcels within the City; (ii) such ordinances are not in direct conflict with the adopted ordinances or guidelines that were in effect on the Effective Date, and (iii) the application of such ordinances or guidelines would not prevent development, or significantly increase the cost of development, of the Project.

3.09 Development Timing. Developer shall be obligated to comply with the terms and conditions at those times specified in either the Project Approvals or this Agreement. The Parties acknowledge that Developer cannot predict with certainty when or the rate at which phases of the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Developer, such as market orientation and demand, interest rates,

competition and other factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development controlling the parties' agreement, it is the intent of the City and Developer to hereby acknowledge and provide for the right of Developer to develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Agreement. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Development Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, City Council Resolution No. 1999-039 and this Agreement. Developer shall use their best efforts, in accordance with their business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement and with the Project Approvals.

3.10. Conflict Resolution. If Developer believes the City has acted in conflict with the Project Approvals, Developer shall provide to the City Manager written notice describing the legal and factual basis for Developer's position. The City Manager will then respond to the allegations within thirty (30) days. If Developer is unhappy with the City Manager's response, such response may be appealed to the City Council.

ARTICLE 4 FEES, COSTS AND REIMBURSEMENTS

4.01. Processing and Inspection Costs. Developer shall pay those processing, inspection and plan checking fees and charges required by City under then current regulations for processing applications and requests for permits, approvals and other actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of Developer hereunder.

4.02. City Impact Fees. Except as provided in this Agreement, Developer shall pay all fees subject to the Mitigation Fee Act, Government Code section 66000 *et seq.*, including System Development Fees, impact fees, connection fees, public facilities fees or similar fees adopted by the City, and all other fees imposed as conditions of approval of the Property ("Fees"), as of the Effective Date of this Agreement. New Fees enacted after the Effective Date of this Agreement shall not be imposed upon the Project. Notwithstanding the above, Fees adopted prior to the Effective Date of this Agreement applicable to the Project may be increased or reduced, provided that such revised fees (a) must be reasonable, (b) have a direct nexus to development of the Property and Project, (c) apply generally to similar private projects or works within the City, and (d) the application of any such fee to the Property shall not require an amendment to this Agreement or any Project Approvals.

4.03. System Development Fee Credits. City and Developer have agreed in concept to System Development Fee credits or reimbursements attributable to Developer, as provided in the agreement attached as **Exhibit D** (the "System Development Fee Reimbursement Agreement" or

“Reimbursement Agreement”). City shall review, consider and remit fee credits and reimbursements attributable to Developer consistent with the City’s System Development Fee (“SDF”) program. City may update its SDF program to incorporate a sewer capacity fee, to update the traffic fee, and/or to update the community park component of the parks fee. Updates to the City’s SDF program fees must occur within two (2) years after the Effective Date of this Agreement to be applicable to the subject Property. In no event, however, shall City adopt or increase the SDF fee for sewer capacity, traffic, or the community park component of the parks fee by more than twenty-five percent (25%) of the current SDF amounts shown on **Exhibit E** (“Eligible Project Specific Reimbursements”) attached hereto. In the event the City Manager reasonably determines that the existing sewer infrastructure is inadequate to serve the Project, the City may increase the SDF fees to cover such improvements, but shall not exceed fifty percent (50%) of the current SDF amounts for sewer shown in **Exhibit E**, or increase any other SDF category within the program, except sewer capacity, traffic and parks. The SDF fee for sewer capacity, traffic and parks may be subject to an annual escalation for inflation commencing five (5) years after the Effective Date, provided that in no event shall escalation exceed three percent (3%) per annum. In addition, no SDF fee increase shall apply to any property for which the Developer has previously paid, requested a credit of such SDF fee(s), or pulled a building permit for such property or building.

4.04. County Fees. Development of the Property is subject to County Development Fees. Developer must provide proof of payment of County Development Fees prior to the issuance of any building permits by City.

4.05. School District Fees. Developer agrees to pay all impact fees established pursuant to Education Code section 17620 and Government Code section 65996 to the Riverbank Unified School District, Modesto City School District and/or the Sylvan Unified School District (whichever District applies) prior to the issuance of any building permit.

ARTICLE 5 IMPROVEMENTS, SERVICES AND UTILITIES

5.01. Fire Protection. Developer acknowledges that, as of the Effective Date of this Agreement, fire protection for the Property is provided by Stanislaus County Consolidated Fire Protection District. This Agreement does not address special assessments or other fees that may or may not apply to the Property in connection with services provided by Stanislaus Consolidated Fire Protection District.

5.02. Police Services. Developer acknowledges that law enforcement services for the City are performed under contract with the Stanislaus County Sheriff's Department.

5.03 Subdivision Improvement Agreement. As the Developer will be financing or completing all Improvements prior to recordation of Final Map, the Parties hereby agree that a Subdivision Improvement Agreement is not necessary.

5.04 Storm Drainage Improvements. Developer agrees to construct storm drainage improvements which shall be a condition to recording the final map. These improvements will stub out at the Diamond Bar East basin.

5.05 Parkland. Developer is not constructing a park and is required to pay standard park fees and a park-in-lieu fee.

ARTICLE 6 CITY OBLIGATIONS

6.01. City Cooperation. City agrees to cooperate with Developer in securing all permits that may be required by City and, to the extent applicable, state and federal agencies. In the event state or federal laws or regulations enacted after this Agreement have been executed, or action of any governmental jurisdiction, prevent, delay or preclude compliance with one or more provisions of this Agreement, or require changes in plans, maps or permits approved by City, the parties agree that the provisions of this Agreement shall be modified, extended or suspended as may be necessary to comply with such state and federal laws or regulations or the regulations of other governmental jurisdictions. Each Party agrees to extend to the other its prompt and reasonable cooperation in so modifying this Agreement or approved plans.

6.02. Applications for Permits and Subsequent Approvals. City agrees that it will accept, in good faith, for processing review and action, all applications for development permits or other entitlements for use of the Property in accordance with the Project Approvals and this Agreement, and shall exercise its best efforts to act upon such applications in an expeditious manner.

ARTICLE 7 DEFAULT, REMEDIES, TERMINATION

7.01. General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either Party to perform any term or provision of this Agreement shall constitute a default. Any Party alleging such default or breach shall give the other Party not less than thirty (30) days' notice in writing specifying the nature of the alleged default and the manner in which the default may be cured. During any such thirty (30) day period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may terminate this Agreement and institute legal or equitable action to cure, correct or remedy any default, including but not limited to an action for specific performance of the terms of this Agreement. In no event shall either Party be liable to the other for consequential damages for any default or breach of this Agreement.

7.02 Developers' Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement and if such applicant or any entity or person controlling such applicant is in default under the terms and conditions of this Agreement, unless such default is cured or this Agreement is terminated. Developer shall cause to

be placed in any covenants, conditions and restrictions applicable to the Property, or in any ground lease or conveyance thereof, express provision for an owner of the Property, lessee or City acting separately or jointly to enforce the provisions of this Agreement and to recover attorneys' fees and costs for such enforcement.

7.03. Default by City. In the event City does not accept, review, approve or issue development permits, entitlements, or other land use or building approvals for use in a timely fashion as provided in this Agreement or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law or equity (except as limited herein). Developer shall provide City with written notice of the default and the City shall have thirty (30) days to notify Developer of City's initial action to cure the default and ninety (90) days from receipt of Developer's notice to cure the default.

7.04. Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, provided, however, that Developer, its successors and assigns hereby waive any and all claims for monetary damages against City arising out of this Agreement at any time. All legal actions shall be initiated in the Superior Court of the County of Stanislaus, State of California.

7.05. Effect of Termination. Termination of this Agreement shall not affect Developer's obligations to comply with the General Plan and the terms and conditions of any and all remaining Project Approvals, nor shall it affect any other covenants of Developer which expressly continue after the termination of this Agreement.

7.06. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of this Agreement shall be that accorded to legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

ARTICLE 8 INDEMNIFICATION

8.01. Indemnification. Developer hereby agrees to indemnify the City, its elective and appointive boards, commissions, officers, agents and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage, which may arise from Developer or Developer's contractors, subcontractors, agents or employees operations under this Agreement, whether such operations be by Developer, or by any of Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by or acting as agent for Developer or any of Developer's contractors or subcontractors. In the event of any legal action instituted by a third party or any governmental entity or official arising out of the approval, execution or implementation of this Agreement

(exclusive of any such actions brought by Developer), Developer agrees to and shall cooperate fully and join in the defense by the City of such action.

8.02. Third Party Legal Challenge. In the event of any legal or equitable act, action, or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding. If Developer elects to file a validation action in order to confirm validity of this Agreement, City agrees to cooperate with Developer in this litigation and further agrees to refrain from raising any arguments that challenge the validity of this Agreement.

ARTICLE 9 ASSIGNMENT; MORTGAGEE PROTECTION

9.01. Mortgagee Protection. This Agreement, once executed, shall be superior and senior to any lien placed upon the Property or any portion thereof, including the lien of any deed of trust or 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, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Any such mortgagee or beneficiary shall be entitled to receive any notice of default under this Agreement provided that such mortgagee or beneficiary has submitted a written request to City to give such notice, setting forth the names and addresses of the persons to receive notices on behalf of such mortgagee or beneficiary and the kinds of notices to be sent to such persons. All provisions of this Agreement allowing Developer to cure any and all defaults shall also be available to any mortgagee or beneficiary entitled to notice above, should that mortgagee or beneficiary desire to cure said defaults.

9.02. Mortgagee Not Obligated. Notwithstanding the provisions of Section 9.01 above, no mortgagee shall have any affirmative obligation or duty under this Agreement to construct or complete improvements, or to guarantee such construction or completion. A mortgagee who takes lawful possession of the Property shall, however, assume any or all development rights consistent with any vested rights and this Agreement. Foreclosure under a mortgage, deed of trust, deed in lieu of foreclosure or sale following foreclosure or deed in lieu of foreclosure is permitted without the consent of the City. Following its acquisition of all or a portion of the Project, such holder of any mortgage or deed of trust, or any successor in interest thereto, shall be entitled to the benefits of this Agreement, shall be bound by its terms and obligations, and shall have standing to enforce the provisions of this Agreement, including the terms and conditions of Project Approvals which pertain to the Project or such portion thereof in which it holds an interest. Any such holder or successor who comes into possession of the Project, or any portion thereof, shall take the Project, or such portion thereof, subject to any claims for payments or charges against the Project or such portion thereof, which accrue under this Agreement or Project Approvals prior to the time such holder or successor comes into possession of the Project or such portion thereof. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder or successor to devote the Project, or any portion thereof, to any uses, or to construct any improvements thereon,

other than those uses and improvements provided for or authorized by Project Approvals and this Agreement, subject to all of the terms and conditions of this Agreement.

9.03. Assignment of Rights. Subject to compliance with Section 9.04 below, Developer may sell, assign or transfer the Project in whole or in part to any person or entity at any time during the Term of this Agreement. Developer shall seek City's prior written consent to any sale, assignment or transfer, which consent shall not be unreasonably withheld or delayed. Failure by City to respond within forty-five (45) days to any request made by Developer for such consent shall be deemed to be City's approval of the sale, assignment or transfer in question. City may refuse to give its consent only if, in light of the proposed assignee's reputation and financial resources, such assignee would not in City's reasonable opinion be able to perform the obligations proposed to be assumed by such assignee. Such determination shall be made by the City Manager, and may be appealable by Developer to the City Council. To the extent reimbursements or fee credits from City are required pursuant to this Agreement or the Project Approvals, any and all such reimbursements and credits shall be distributed to Developer unless Developer and the subsequent Landowner specifically direct City in writing to distribute such reimbursements, or apply such credits, otherwise.

9.04. Assumption of Rights. Express written assumption of this Agreement by a subsequent Landowner of the obligations and other terms and conditions of this Agreement shall relieve Developer of such obligations so expressly assumed. Any such assumption agreement (**Exhibit F**) shall be in recordable form and shall be approved as to form by the City Attorney, and shall provide for a subsequent Landowner to contractually assume all of the rights of Developer as a Party to this Agreement with respect to the Project site, or portions thereof, which is sold, assigned or transferred by Developer to the subsequent Landowner. The City Clerk shall cause any such assumption agreement received by him or her to be duly recorded in the official records of Stanislaus County within ten (10) days of receipt. Subject to City's approval of such transfer pursuant to Section 9.3 above, upon recordation of said assumption agreement, Developer shall automatically be released from those obligations assumed by the assignee.

ARTICLE 10 GENERAL

10.01. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of Developer and City and their successors and assigns, no other person shall have any right of action based upon any provision in this Agreement.

10.02. Project is a Private Undertaking. Both Parties acknowledge that the Project is a private development. No partnership, joint venture or other association of any kind between Developer and the City is formed by this Agreement. The only relationship between the City and Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

10.03. Covenants Running with the Land. All of the terms and conditions contained in this Agreement are binding upon and benefit the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or any portion of the Property, whether by operation of law or in any manner whatsoever, during their ownership of the Property,

or any portion thereof. All of the terms and conditions of this Agreement constitute covenants running with land pursuant to California law, including, without limitation, Civil Code section 1468.

10.04. Severability. Except as set forth herein, if any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if any provision of this Agreement is determined to be invalid or unenforceable and the effect thereof is to deprive a Party of an essential benefit of its bargain hereunder, then such Party so deprived shall have the option to terminate this entire Agreement from and after such determination.

10.05. Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer with the terms and conditions of this Agreement, pursuant to Government Code section 65865.1. If, following such review, the City Manager is not satisfied that Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement, or for any other reason, the City Manager may refer the matter along with his or her recommendations to the City Council. Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

10.06 Estoppel Certificate. City shall, within at least twenty (20) days prior written notice, execute, acknowledge and deliver to Developer, Developer's lender, potential investors and 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 terminated and is enforceable in accordance with its terms and conditions.

10.07 Construction. This Agreement shall be subject to and construed in accordance and harmony with the Riverbank Municipal Code, as it may be amended provided that such amendments do not impair the rights granted to the Parties by this Agreement.

10.08. Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Party the full and complete enjoyment of its rights and privileges hereunder.

10.09. Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, 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 or communication shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (a) actual receipt by any of the addressees designated below as the party to whom notices are to be

sent, or (b) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City: City of Riverbank
6707 3rd Street
Riverbank, CA 95367
Attn: City Manager

With a copy to: Brenner White LLP
1414 K Street, 3rd Floor
Sacramento, CA 95814
Attn: Douglas L. White, Esq.

With a copy to: Neumiller and Beardslee
c/o Rod A. Attebery
Po Box 20
Stockton CA 95209

If to Developer: SCM Hearthstone LLC
1920 Standiford Avenue, Suite 1
Modesto, CA 95350

10.10. Prevailing Wage. Developer shall be solely responsible for determining whether construction of any or all of the improvements required in connection with the Project trigger the obligation to pay prevailing wages under California or federal law. In the event and to the extent that the payment of prevailing wages is required, Developer shall use diligent good faith efforts to ensure full compliance with those requirements. Developer shall defend, indemnify and hold harmless City, its agents, employees, officers and officials from any liability, loss, debts, costs or damages sought by a third party for a failure to pay prevailing wages in connection with the Project. The indemnification obligation set forth in this Section shall survive the termination of this Agreement.

10.11 Project is a Private Undertaking. It is specifically understood and agreed to by and between the Parties that: (1) each and every phase the Project is a private development; (2) City has no interests or responsibilities, or duty to third parties, concerning any improvements until such time and only until such time that City accepts any dedications or Infrastructure Improvements pursuant to the provisions of this Agreement or in connection with the Project Approvals; (3) Developer shall have full power over and exclusive control of the Subject Property, subject only to the limitations and obligations of Developer under this Agreement; and (4) Developer is not an agent of the City, and City is not an agent of Developer, and neither Party shall be considered to be in a joint-venture with the other Party. If any provision of this Agreement results

in an obligation of either Party under state or federal law that is contrary to the intent of the Parties expressed herein, said provision shall be invalidated and severed from the Agreement and the rest of the Agreement shall remain in full force and effect.

10.12 Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue shall be in the Superior Court of Stanislaus County.

10.13 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all negotiation or previous agreements between the Parties with respect to the development and buildout of the Project. To the extent there are conflicts or inconsistencies between this Agreement and any prior agreement, map approval, permit or conditions of approval, the provisions of this Agreement shall prevail. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City and Developer. All amendments, which are authorized in the manner provided by law, must be in writing, signed by the appropriate authorities of City and Developer, in a form suitable for recording by the Stanislaus County Clerk-Recorder. Any such amendments shall be promptly recorded.

10.14 Counterparts. This Agreement and any and all amendments and supplements to it may be executed in notarized counterparts, and all counterparts together shall be construed as one document.

10.15 Waiver. No waiver by a Party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a Party of any right or remedy provided in this Agreement or provided by law shall not prevent the exercise by that Party of any other remedy provided in this Agreement or under the law.

10.16 Attorneys' Fees. Should any action or dispute arise concerning the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, including, without limitation, attorneys' fees on any appeal, reasonable costs for investigating such actions, taking depositions and discovery, and all other necessary or appropriate costs incurred in the action.

10.17 Covenants Run with the Land. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Subject Property and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project and the Subject Property, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

10.18 Estoppel Certificate. Developer may, and from time to time, deliver written notice to City requesting City to certify in writing that, to the best knowledge of City: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified, or if so amended or modified, identifying the amendments or modifications; and (iii) Developer is not in default in the performance of its obligations under this Agreement, or

if in default, to describe therein the nature of such default. City shall execute and return such certificate within fifteen (15) business days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Developer. Costs incurred by City in preparing any estoppel certificate requested by Developer shall be reimbursed by Developer.

[Signatures on following page]

DRAFT

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date, as defined in Section 1.07 above.

CITY	DEVELOPER
The City of Riverbank, a California municipal corporation	The Heritage Collection at Sierra Street
By: _____ Richard O'Brien, Mayor	By: _____ Steve Mothersell, President
Date: _____	
APPROVED AS TO FORM:	
By: _____ Tom Hallinan, City Attorney	
ATTEST:	
By: _____ City Clerk	

EXHIBIT A

The Heritage Collection at Sierra Street Tentative Map

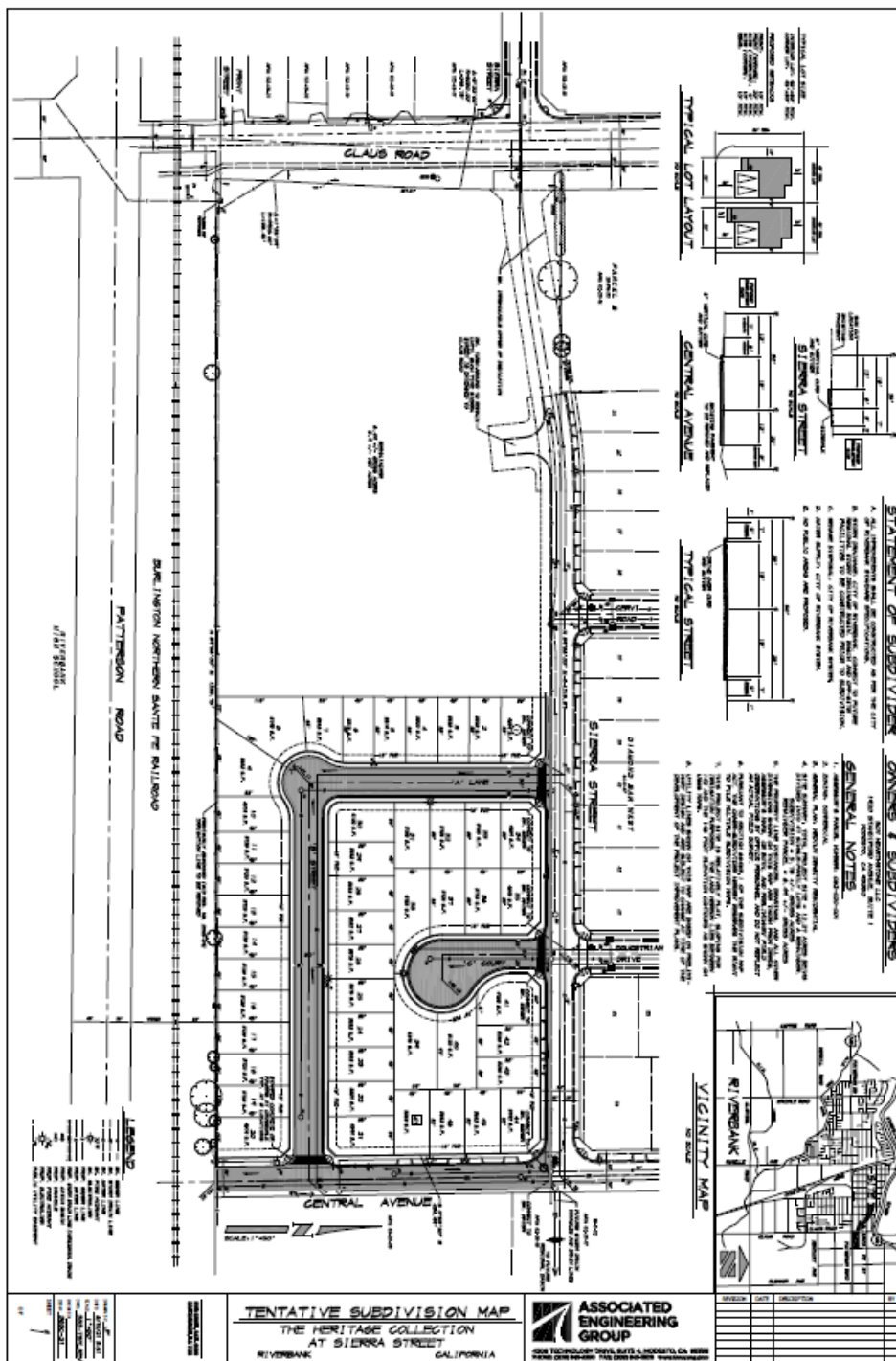


EXHIBIT B

Legal Description of Property

Real Property in the City of Riverbank, County of Stanislaus, State of California, described as follows:

PARCELS A, B, C, AND D, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED APRIL 18, 1975, IN BOOK 21 OF PARCEL MAPS, AT PAGE 13, STANISLAUS COUNTY RECORDS.

PROPERTY ADDRESS: 6448 Claus Road, Riverbank, CA 95367

APN: 062-020-001-000

DRAFT

EXHIBIT C

Conditions of Approval

City of Riverbank
Planning Commission
Resolution No. 2021-016

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY
OF RIVERBANK RECOMMENDING APPROVAL OF THE
REQUEST OF SCM HEARTHSTONE LLC FOR TENTATIVE MAP 01-
2021 TO SUBDIVIDE 12.27± ACRES INTO 47 PLANNED
DEVELOPMENT SINGLE FAMILY RESIDENTIAL LOTS AND A
REMAINDER LOT, LOCATED AT 6448 CLAUS ROAD APN: 062-020-
001

WHEREAS, an application has been received from SCM Hearthstone LLC, with a proposal to subdivide approximately 12.27± acres into forty-seven (47) single family lots and a remainder lot (6.49 gross acres), which allows for a net density of eight to sixteen (8-16) 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 0.43 acres;

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), CONS-4.2 (stormwater); and

WHEREAS, Tentative Map 01-2021 was reviewed by the Riverbank Planning Commission at a regular meeting held on August 17, 2021 in the manner prescribed by law; and

WHEREAS, The Riverbank Planning Commission recommends approval of the requested Tentative Map dated June 15, 2021 prepared by Associated Engineering Group, 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.

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REIMBURSEMENT AGREEMENT

- C. The City finds that Pursuant to the California Environmental Quality Act, 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.
- D. The approval of Tentative Map 01-2021 to divide parcel APN 062-020-021 (12.27± acres) into 47 single family lots and a remainder lot (5.9 net acres) 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 (currently in process), or receive confirmation from the Community Development Director that a specific condition or conditions does not apply to the subject project; and
2. The project storm drainage system shall be sized to manage the storm water from Sierra Street, Central Avenue, and all interior streets and lots within a storage basin per City Standards.
3. Connection to the existing Diamond Bar West storm drain basin is required in the first phase of the project
4. Storm water on the west side of Central Avenue shall also be managed with roadside swales and horizontal drains or connected to the storm basin.
5. Additional storm water inlets are required per City Standards and are not to exceed 500 feet spacing.
6. Sierra Street shall be fully constructed from Claus Road to the existing improvements constructed with Diamond Bar West.
7. Complete street improvements are required on Claus Road which includes curb, gutter, and sidewalk. A crosswalk for school children shall be constructed at Claus Road and Sierra Street.
8. A concrete sound wall is required along the railroad tracks.

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9. Three amenities are required per the Rezone application: (1) decorative garage doors, (2) decorative garage lights, and (3) pavers or colored pavement at crosswalks at the subdivision entrance.
10. Three (3) sets of landscape and irrigation plans conforming to the state's MWEL requirements shall be prepared and submitted with fee for review and approval by the City's contract landscape architect before Final Map. The storm basin shall be fully landscaped and slope protection provided; and
11. 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
12. All existing overhead electrical shall be placed underground; and
13. 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 0.43 acres; and
14. All wet utilities are to be cleaned, tested, and videotaped prior to acceptance by the City of Riverbank; and
15. Street names shall be approved by City Council on the Final Map; and
16. An automatic fire system shall be provided for all Group R occupancies. CFC 903.2.8; and
17. Buildings shall be provided with proper address identification in accordance with the California Fire Code as amended by the Stanislaus Consolidated Fire Protection District. CFC 505.1; and
18. 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
19. 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
20. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to the site. CFC 507.1; and
21. 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
22. 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
23. All haul trucks transporting soil, sand, or other loose material off-site shall be covered; and

24. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited; and
25. All vehicle speeds on unpaved roads shall be limited to fifteen (15) miles per hour; 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; and
31. If potential human remains are encountered, the construction contractor shall halt work in the vicinity (within 100 feet) of the find and contact the City of Riverbank. The project applicant and/or contractor shall be required to contact the Stanislaus County Coroner in accordance with Public Resources Code Section 5097.98 and Health and Safety Code Section 7050.5. If the coroner determines the remains are Native American, the coroner would contact the Native American Heritage Commission (NAHC). As provided in Public Resources Code Section 5097.98, the NAHC would identify the person or persons believed to be most likely descended from the deceased Native American. The most likely descendent makes recommendations for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98; and
32. Consistent with the requirements of the City of Riverbank Municipal Code, the National Pollutant Discharge Elimination System (NPDES) Construction General Permit, the project applicant shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce potential adverse impacts on surface water quality through the project construction period. The SWPPP shall be designed to address the following objectives:
 - a. All pollutants and their sources, including sources of sediment associated with construction, construction site erosion, and all other activities associated with construction activity, are controlled using source control and treatment control best management practices (BMPs).
 - b. Where not otherwise permitted by the Regional Water Quality Control Board, all non-

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stormwater discharges are identified and eliminated.

- c. BMPs are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity in accordance with the Construction General Permit; and

33. The project applicant shall fully comply with the City of Riverbank Municipal Code and all Regional Water Quality Control Board stormwater permit requirements, including Provision C.3 of the Municipal Regional Permit (MRP). This will require preparation and implementation of a complete Stormwater Control Plan (SCP) for the project, which shall be submitted to the City Engineer for review and approval prior to any construction activity. The SCP shall act as the overall program document designed to provide measures to mitigate potential water quality impacts associated with the operation of the proposed project and shall be designed to comply with both MRP and City of Riverbank requirements. At a minimum, the SCP for the project shall include the following:

- a. An inventory and accounting of existing and proposed impervious areas.
- b. Low Impact Development (LID) design details incorporated into the project. Specific LID design details may include but are not limited to rain gardens, bio retention areas, pervious pavements, harvesting and reuse of stormwater, dispersal of runoff to landscaped areas, and/or routing of runoff swales and other small-scale facilities distributed throughout the site.
- c. Measures to address potential stormwater contaminants. These may include measures to address potential sources of stormwater pollutants at the project site, covering trash collection and parking areas.
- d. A Draft Stormwater Facility Operation and Maintenance Plan for the project site, which shall include periodic inspection and maintenance of the storm drainage system. Persons responsible for performing and funding the requirements of this plan shall be identified. This plan shall be finalized prior to the issuance of any building permits for the project; and

34. Construction equipment shall be well maintained to be as quiet as possible. The following measures, when applicable, shall be implemented to reduce noise from construction activities:

- a. All internal combustion engine-driven equipment shall be equipped with mufflers that are in good condition and appropriate for the equipment.
- b. "Quiet" models of air compressors and other stationary noise sources shall be used, where technology exists.
- c. Stationary noise-generating equipment shall be located as far as feasible from sensitive receptors (neighboring dwellings).
- d. Unnecessary idling of internal combustion engines shall be prohibited.
- e. Staging areas and construction material storage areas shall be located as far away as possible from adjacent sensitive land uses (neighboring dwellings).
- f. Construction-related traffic shall be routed along major roadways (Claus Road and

Patterson Road) and as far as feasible from sensitive receptors.

- g. Residences or noise-sensitive land uses adjacent to construction sites shall be notified of the construction schedule in writing. The construction contractor shall designate a "construction liaison" that would be responsible for responding to any local complaints about construction noise. The liaison shall determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and shall institute reasonable measures to correct the problem. The construction contractor shall conspicuously post a telephone number for the liaison at the construction site.
- h. The construction contractor shall hold a pre-construction meeting with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, construction schedule, and construction liaison) are completed.

NOW THEREFORE, BE IT RESOLVED the City of Riverbank Planning Commission recommends for approval Tentative Map No. 01-2021 (**Exhibit A**), subject to these Conditions of Approval established by Resolution No. 2021-016 and to be recorded as modified.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a meeting held on the 17th of August, 2021; motioned by Commissioner Link, seconded by Commissioner Basso, and upon roll call was carried by the following vote of 5-0:

AYES: Commissioners Stewart, Link, Dinan, Basso, and Reuben

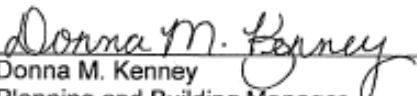
NOES:

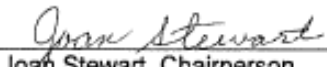
ABSENT:

ABSTAIN:

Attest:

Approved:


Donna M. Kenney
Planning and Building Manager


Joan Stewart, Chairperson
Planning Commission

Attachment: Exhibit A – Tentative Map 01-2021

Riverbank Planning Commission
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REIMBURSEMENT AGREEMENT

EXHIBIT D

Draft System Development Fee Reimbursement Agreement

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the “Agreement”) is made this ____ day of _____ 20__ (the “Effective Date”), by and between the City of Riverbank, a municipal corporation (“City”), and _____ (“Developer”). City and Developer may each be referred to individually as a “Party” or collectively as the “Parties”. There are no other parties to this Agreement.

RECITALS

A. On September 14, 2021, the City Council adopted Resolution No. 2021-084 approving Tentative Map 01-2020 and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately forty-seven (47) residential lots on 12.27 acres.

(a)

B. On September 14, 2021, the City Council adopted Resolution No. 2021-084, approving Tentative Map 01-2020 (the “Tentative Map” and “Project Area”). The Tentative Map is attached hereto for reference, as **Exhibit A**.

(b)

C. On _____, 2022, City adopted Ordinance No. 2022-____, approving a development agreement between City and Developer (the “Development Agreement”), to extend the life of the Tentative Map, clarify the conditions of approval applicable to the Project Area, establish vested entitlements to construct forty-seven (47) residential lots in the Project Area, and overall, to promote the logical and orderly development of the Project Area.

(c)

D. Developer is obligated to construct and install public improvements in the Project Area (the “Improvements”).

(d)

E. City proposes to provide Developer credits for the installation of the Improvements that the City has identified in its System Development Fee (“SDF”) program. The total reimbursement for each category of Improvements is provided in **Exhibit B** attached hereto (the “SDF Fee Reimbursements”).

(e)

F. The revised SDF fees for each unit in the Project Area, as revised in accordance with this Agreement, is provided in **Exhibit C** attached hereto.

NOW, THEREFORE, in consideration of the mutual promises contained herein, City and Developer hereby agree as follows:

AGREEMENT

Section 1. Project Scope. Developer shall be responsible for the design, construction, installation and bonding of the Improvements. City shall approve all plans and specifications for the construction, and City shall inspect and accept the Improvements in accordance with Riverbank Municipal Code (“City Code”). The design and installation of the Improvements shall be to the satisfaction of City in its sole discretion, in accordance with City Code.

Section 2. Reimbursement. As provided below, City shall reimburse Developer for the completion and acceptance by City of the Improvements listed in Exhibit B.

2.1. *Amount of Reimbursement.* City shall reimburse Developer an amount up to the total reimbursement, for each SDF category shown in Exhibit B provided that the Improvements are accepted by City.

2.2. *Source of Reimbursement.* Reimbursements to Developer shall come from the following:

(a) SDF Fee Credit. Upon issuance of each of the forty-seven (47) building permits in the Project Area, City shall reduce the SDF fees collected from Developer for each category of SDF fees related to the Improvement to be constructed (the “SDF Fee Credit”), in an amount up to the total SDF reimbursement shown on Exhibit B.

(b) SDF Fee Reimbursement. In some cases, such as _____ the total SDF reimbursement exceeds the SDF Fee Credits available for the Project Area. In such case, after issuance of the ___th building permit in the Project Area, City shall pay the difference between the total SDF reimbursement and the SDF Fee Credits from the appropriate development impact fee fund, if funds are available, after the Improvements have been accepted by City as complete. City shall track and make payments to Developer based on the timing and priority of the request compared to other developers, using the date the City Council issues the ___th building permit as the priority date for reimbursement from City’s SDF.

2.3. *Limited Obligation.* City shall only be required to provide SDF Fee Credits to Developer for Improvements listed in Exhibit B. City makes no warranty, express or implied, that SDF Fee Credits will be available to fully compensate Developer for the cost of installing the Improvements. In no event shall City be required to reimburse Developer directly from City’s general fund. Developer further acknowledges that any deficiency in reimbursement for the cost of the Improvements shall in no way diminish Developer’s obligations with respect to any provision in the Tentative Map or Development Agreement.

2.4. *Conditions for Payment.* City shall provide SDF Fee Credits to Developer only after all of the following conditions have been met to City’s satisfaction:

(a) Developer has designed and constructed the Improvements in accordance with the City's public improvement design standards;

(b) City has formally accepted the dedication of Improvements for which the SDF Fee Credit reimbursement is sought by Developer;

(c) Developer is not in default of any obligation under this Agreement, the Development Agreement or any other agreement related to the Project Area, such as a subdivision improvement agreement; and

(d) Developer is not in default of any monetary obligation to the City, including without limitation plan check and inspection fees, loan repayments due to the City, ad valorem property taxes, special assessments or special taxes.

Section 3. Compliance with Laws. Developer shall insure that all work performed on the Improvements is performed in a manner that complies with all applicable federal, state, county and local government laws, regulations and rules, including all rules and regulations of City, as these rules and regulations may be modified or changed from time to time.

Section 4. City Inspection of Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Improvements and areas where construction of the Improvements is occurring or will occur.

Section 5. Quality of Work; Compliance with Laws and Codes. The construction plans and specifications for the Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is commenced.

Section 6. Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

Section 7. Limited City Obligation. The obligations arising from this Agreement are neither a debt of City nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except for the issuance of SDF Fee Credits, as provided herein. Neither the City's general fund nor any special fund of City, except for the applicable account associated with each SDF category, shall be liable for the payment of any obligations arising from this Agreement. The credit or taxing power of City is not pledged for the payment of any obligation arising from this Agreement. Developer shall not compel the forfeiture of any of City's property to satisfy any obligations arising from this Agreement.

Section 8. Liens, Claims, and Encumbrances. Upon request by City, Developer shall provide a written guarantee and assurance to City that there are no liens, claims, or monetary encumbrances on the Improvements, together with unconditional final releases from all contractors and material suppliers, and with copies of invoices and corresponding checks issued by the Developer for all items for which reimbursement is requested under this Agreement for the Improvements. Notwithstanding any other provision or term of this Agreement, City shall have no obligation to make any reimbursement payments until Developer has cleared any and all liens, claims and monetary encumbrances from the Improvements and provided the required documentation, guarantee and assurance in writing, to the satisfaction of the City.

Section 9. Acceptance. The City Engineer shall accept the Improvements in his or her sole discretion, pursuant to City Code, all applicable federal and state rules and regulations, and a subdivision improvement agreement between the Parties.

Section 10. Indemnity. [omitted – see subdivision improvement agreement].

Section 11. Assignment of Fee Credits. Fee Credits to be issued by City are personal to Developer and shall not automatically run with the land or the subsequent purchasers of Developer's property. Developer may transfer or assign any or all Fee Credits associated with this Agreement by providing notice to the City through a written statement in a form acceptable to the City Attorney. City may accept the assignment of Fee Credits for the same SDF categories to future developments on a dollar-for-dollar basis. The written statement shall notify the City of the credit amount that Developer intends to transfer or assign to specified properties or developments. After receipt of such written request from Developer and prior to issuance of building permits, City shall confirm in writing the amount of related SDF fees that City will collect from the assignee. In the absence of such written statement by City, no assignee may claim SDF Fee Credits attributable to this Agreement.

Section 12. Notice. Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City: City of Riverbank
6707 Third Street
Riverbank, California 95367
Attention: City Clerk

With a courtesy copy to:

City of Riverbank
6707 Third Street
Riverbank, California 95367
Attention: City Manager

And to:

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

Developer:

With a copy to:

Either Party may give notice hereunder to designate a different address to which subsequent notices, payments or instruments shall be delivered.

Section 13. General Provisions.

13.1. *Term.* The term of this Agreement shall start as of the Effective Date written above and shall remain in effect until all Improvements have been accepted by City and City has awarded all SDF Fee Credits to Developer.

13.2. *Termination.* In the event Developer defaults in the performance of any of its obligations under this Agreement or materially breaches any of the provisions of this Agreement, and such default or breach is not cured by Developer within 10 business days (or such longer period as may be necessary) of written notice from City specifying such default, City shall have the option to terminate this Agreement upon written notice to Developer, or seek any available remedies at law.

13.3. *Captions.* Captions to each Section of this Agreement are for convenience purposes only, and are not part of this Agreement.

13.4. *Severability.* If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

13.5. *Governing Law; Venue.* This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Stanislaus, State of California.

13.6. *Assignment.* This Agreement shall not be assigned without the written consent of the Parties, which consent shall not be unreasonably withheld or delayed, and any assignment without such written consent shall be void and ineffective.

13.7. *Entire Agreement.* This Agreement contains the entire agreement between the parties with respect to the reimbursement of SDF Fee Credits. The Parties acknowledge that a subdivision improvement agreement will address improvement standards, bonding requirements and other provision related to the construction of the Improvements and their dedication to City.

13.8. *Modification.* This Agreement may be amended only by a written instrument signed by the Parties.

13.9. *Counterparts.* This Agreement may be executed in counterpart s, each of which shall be deemed an original, but both of which together shall constitute one instrument.

13.10. *Exhibits.* All exhibits attached hereto are incorporated as part of this Agreement.

13.11. *Interpretation.* Each Party acknowledges it has reviewed this Agreement with its own legal counsel and based upon the advice of that counsel, freely entered into this Agreement.

13.12. *Mandatory and Permissive.* “Shall” and “will” and “agrees” are mandatory. “May” or “can” are permissive.

13.13. *Waiver.* The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

13.14. *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.

13.15. *Attorneys’ Fees.* In the event any party to this Agreement commences litigation for specific performance or damages for the breach of this Agreement, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court costs incurred.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the above-referenced Effective Date.

CITY:

City of Riverbank, a California municipal corporation

By: _____
_____, City Manager

Date Signed: _____

DEVELOPER:

a [California limited liability company/corporation]

By: _____

Name: _____

Title: _____

Date Signed: _____

APPROVED AS TO FORM:

By: _____
Tom Hallinan, City Attorney

Tentative Map

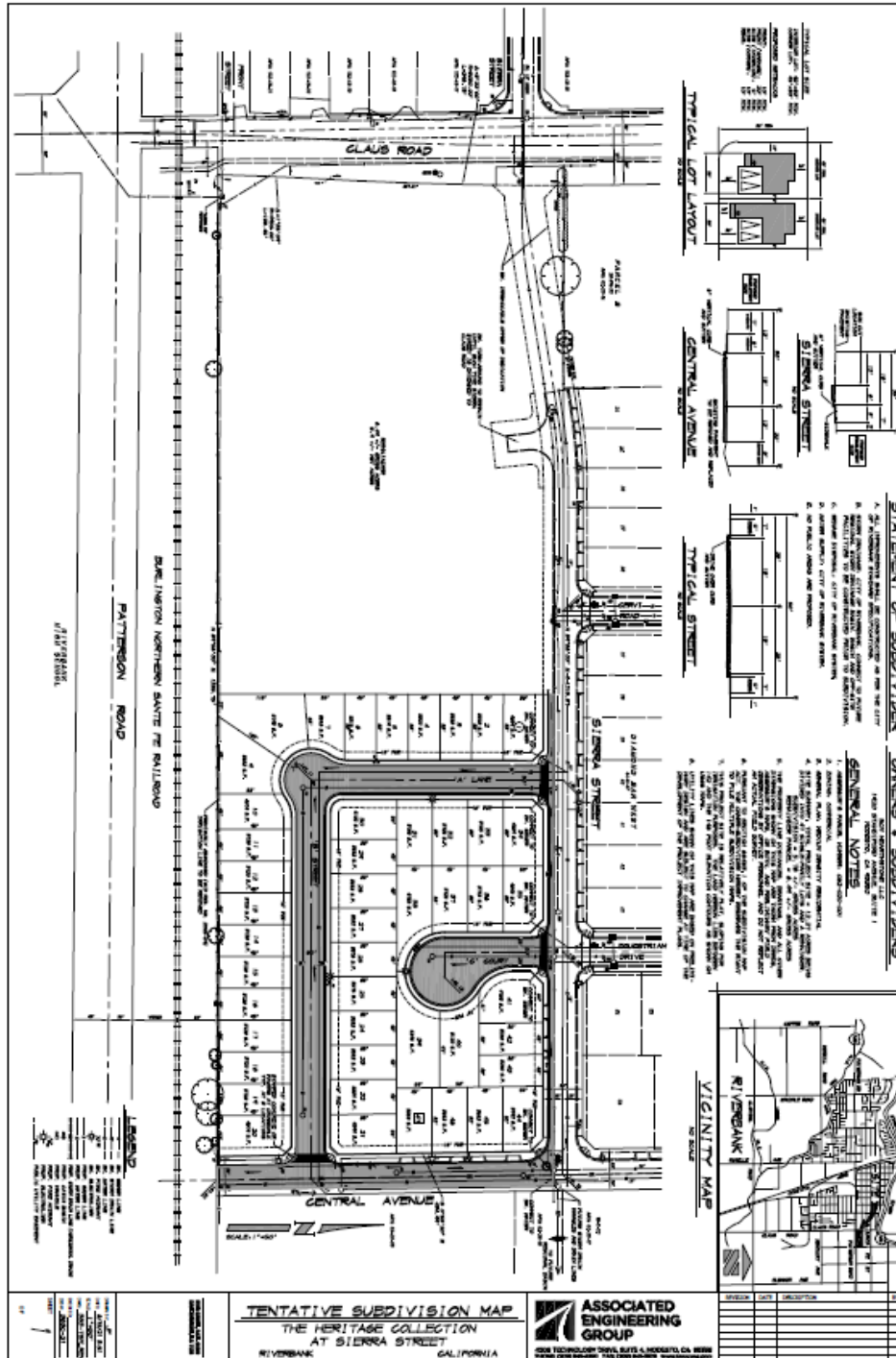


EXHIBIT B

SDF Fee Reimbursements

The following improvements shall be eligible for reimbursement through the City's SDF Fee program:

DRAFT

EXHIBIT C

Adjusted SDF Fee Schedule

The following is the adjusted SDF Fee schedule applicable to the Project Area:

Facility Type	Single Family Residential (SFR) per unit
Streets	\$ _____
Streets – Signals & Bridges	\$ _____
Sewer Collection	\$ _____
Sewer Treatment	\$ _____
Water Distribution	\$ _____
Water Wells & Storage	\$ _____
Storm Drainage	\$ _____
Storm Drainage (Other)	\$ _____
Police	\$ _____
Fire	\$ _____
Parks & Recreation	\$ _____
General Government	\$ _____
Administration (2%)	\$ _____

EXHIBIT E

Riverbank Fee Charts

2022 System Development Fees*

Land Use	Water	Sewer	Storm Drainage	Parks/ Rec.	General Govt.	Traffic	5% Admin ¹	Total
Residential	Per DU	Per DU	Per DU	Per DU	Per DU	Per DU	Per DU	Per DU
Clustered Rural (RR)	\$15,828	\$5,896	\$8,957	\$4,039	\$1,463	\$4,167	\$2,017	\$42,369
Lower Density (LDR)	\$8,244	\$3,595	\$8,124	\$4,592	\$1,662	\$3,501	\$1,486	\$31,203
Medium Density (MDR)	\$7,914	\$3,003	\$3,280	\$3,935	\$1,423	\$3,084	\$1,132	\$23,771
Higher Density (HDR)	\$5,738	\$3,687	\$3,701	\$3,280	\$1,186	\$2,625	\$1,010	\$21,227
Mixed Use (Residential) (MU)	\$5,738	\$1,116	\$2,395	\$2,862	\$1,036	\$4,167	\$866	\$18,181

(*Adopted 4/12/2022)

Sewer Connection Fees

Subdivision Lots – Single Family

- ❑ \$400.00/dwelling unit if the sewer lateral has been installed
- ❑ \$30.00 inspection fee, number of inspections to be determined.

Water Connection Fees

Subdivision Lots - Single Family

- \$400.00/dwelling unit to be paid prior to recording of final map.
- \$75.00 inspection fee, number of inspections to be determined.

Water Meters

Applicant to purchase and install own water meters by Public Works standards. Contact Public Works at 869-7128 for water meter information.

EXHIBIT F

Assumption and Assignment Agreement

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

Recording fees exempt (Gov. Code §§ 6103, 27383) (Space above line for recorder's use only)

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") shall be deemed effective as of _____, 202__ ("Effective Date"), by and between _____, a California Corporation ("Assignor") and _____, a California Corporation ("Subsequent Landowner").

RECITALS

A. Assignor has entered into a Development Agreement with the City of Riverbank, dated _____, which was recorded on _____ as Document No. _____ in the Official Records of Stanislaus County, California (the "Development Agreement").

B. Assignor has agreed to develop property pursuant to the Development Agreement, which is now proposed for assignment pursuant to this Agreement, and is more particularly described as _____, as set forth in more detail in the Legal Description attached and incorporated hereto as **Exhibit A** (the "Assigned Parcels").

C. Subsequent Landowner desires to assume all of Assignor's rights, duties and obligations under the Agreement with respect to the Assigned Parcels and Assignor seeks to be relieved of said assigned rights, duties and obligations in reference to the Assigned Parcels.

NOW, THEREFORE, Assignor and Subsequent Landowner hereby agree as follows:

AGREEMENT

1. Assignor hereby assigns, effective as of _____, 202__, all of the rights, interests, burdens and obligations of Assignor under the Agreement with respect to the Assigned

Parcels. Assignor retains all of the rights, interests, burdens and obligations under this Agreement with respect to all property other than the Assigned Parcels within the Subject Property owned by Assignor.

2. Subsequent Landowner hereby assumes all of the rights, interests, burdens and obligations of Assignor under this 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 Assigned Parcels. It is the express intention of both Assignor and Subsequent Landowner that, upon the Effective Date, Subsequent Landowner shall become substituted for Assignor as a “Developer” under the Development Agreement with respect to the Assigned Parcels. Assignor acknowledges that Assignor shall remain subject to the duties and obligations of the Development Agreement if Assignor retains any portion of the Subject Property subject to the Development Agreement.

3. All of the covenants, terms, and conditions of this Agreement and set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

4. Subsequent Landowner’s address for all notices, as described in Section 10.09 of the Development Agreement, shall be as follows:

Attn: _____,

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the above-referenced Effective Date.

ASSIGNOR:

_____,
a California Corporation

By: _____

Name: _____, _____

Title: _____

On behalf of _____, _____

SUBSEQUENT LANDOWNER:

_____,
a California Corporation

By: _____

Name: _____, _____

Title: _____

On behalf of _____, _____

APPROVED:

_____, City Manager
City of Riverbank

EXHIBIT A

Assigned Parcels

California All-Purpose Acknowledgment

Pursuant to SB 1050 (Chapter 197, Statutes of 2014), Civil Code section 1189 has been amended to provide that any certificate of acknowledgment taken within the State of California shall be in the following form:

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

Pursuant to SB 1050 (Chapter 197, Statutes of 2014), Civil Code section 1189 has been amended to provide that any certificate of acknowledgment taken within the State of California shall be in the following form:

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

Pursuant to SB 1050 (Chapter 197, Statutes of 2014), Civil Code section 1189 has been amended to provide that any certificate of acknowledgment taken within the State of California shall be in the following form:

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 B

Ordinance No. 2022-XXX

**CITY OF RIVERBANK
ORDINANCE NO. 2022-XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK
APPROVING DEVELOPMENT AGREEMENT NO. 03-2021 FOR THE HERITAGE
COLLECTION AT SIERRA STREET SUBDIVISION (APN 062-020-001)**

WHEREAS, SCM Hearthstone, LLC, which proposes to develop 47 residential lots in the City of Riverbank ("City") and related public improvements, is requesting to extend by Development Agreement the life of Tentative Map 01-2021, a subdivision known as The Heritage Collection at Sierra Street ("The Heritage" or "Project"); and

WHEREAS, in order 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.* ("Development Agreement Statute"), which authorizes the City and property owner to enter into a development agreement that establishes certain development rights in real property that is the subject of a development project application; and

WHEREAS, consistent with the requirements of the Development Agreement Statute, the City has adopted Resolution No. 99-39 establishing rules, regulations, and limitations for Development Agreements; and

WHEREAS, On September 28, 2021, the City Council adopted Ordinance No. 2021-006, approving a rezone of 12.27 acres to Planned Development and allowing for a net density of eight to sixteen (8-16) dwelling units per net acre; and

WHEREAS, On September 28, 2021, the City Council adopted Resolution No. 2021-048, approving Tentative Map 01-2021 and related conditions of approval, which set forth the infrastructure obligations and conditions related to the development and build out of approximately 47 residential lots on 12.27 acres; and

WHEREAS, the City of Riverbank Planning Commission held a duly noticed public hearing on Tuesday, April 19, 2022 to consider The Heritage Development Agreement and provided their recommendation to the City Council; and

WHEREAS, the City and SCM Hearthstone LLC intend to enter into a Development Agreement concerning the Project pursuant to California Government Code section 65864 and Resolution No. 99-39; and

EXHIBIT B

WHEREAS, the City Council of the City of Riverbank held a duly noticed public hearing on _____, 2022 to consider the introduction of The Heritage at Sierra Street Development Agreement for first reading; and

WHEREAS, the City Council of the City of Riverbank held a duly noticed public hearing on _____, 2022 to consider the approval of The Heritage at Sierra Street Development Agreement; and

WHEREAS, the City Council for City of Riverbank, based on its independent review and analysis, the staff analysis, oral and written testimony, and the record as a whole, finds, after due study, deliberation and public hearing, and based on its independent judgment, the following:

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; and
2. The City Council finds that The Heritage Development Agreement:
 1. Is consistent with the objectives, policies, and programs and residential land uses established by the 2005 Riverbank General Plan; and
 2. Is consistent with the provisions of Government Code Section 65864 through 65869.5; and
 3. Is in conformity with the public convenience and general welfare and good land use practices because the terms of the Development Agreement establish appropriate and adequate mechanisms to fund and install infrastructure needed to support public services relating to the Project and General Plan planning area; and
 4. Will provide funding and infrastructure to support the Project, and will not adversely affect the orderly development of property or the preservation of property values; and
 5. Will provide funding and infrastructure to ensure that adequate public services are available to serve the Project without being detrimental to the health, safety, and general welfare of the City of Riverbank; and
 6. Provides sufficient benefit to the City to justify entering into the Development Agreement.

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

EXHIBIT B

Section 1: The City Council of the City of Riverbank approves a Development Agreement by and between SCM Hearthstone LLC and the City of Riverbank relating to the development known as “The Heritage Collection at Sierra Street” located on the following APN: 062-020-001.

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.

Section 3: Notice of the public hearing on the proposed Development Agreement Ordinance was published in the Riverbank News, a newspaper of general circulation, on April 6, 2022; 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, on April 4, 2022.

Section 4: Pursuant to the California Environmental Quality Act (CEQA) environmental impacts relating to the Project were evaluated in the Notice of Exemption adopted on September 28, 2021, when the City Council approved a Tentative Map and Rezoning for the Project. Pursuant to CEQA Guidelines Section 15378, the Development Agreement is within the purview of The Heritage Project, for which environmental impacts have already been reviewed. Thus, approval of the Development Agreement does not require further environmental review.

Section 5: If any section, subsection, sentence, clause, phrase, or word of this resolution 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 resolution. 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, provided it is published in a newspaper of general circulation at least fifteen (15) days prior to its effective date or a summary of the Ordinance is 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 ____, 2022; motioned by Council Member _____, seconded by Council Member _____, and upon roll call was carried by the following vote ____:

AYES:

EXHIBIT B

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Kathy Teixeira
Interim City Clerk

Richard D. O'Brien
Mayor

**CITY OF RIVERBANK
PLANNING COMMISSION
STAFF REPORT**

ITEM NO: 3.3 **April 19, 2022**

APPLICATION: **General Plan Amendment 01-2021 and Rezone 02-2021 (Dept. File #21-0024) – Pocket Avenue Senior Apartment Complex – 3318 Pocket Avenue (APN 075-090-063).** The applicant requests a General Plan Amendment to modify the existing Low Density Residential (LDR) land-use designation to Higher Density Residential (HDR) and to rezone the existing Single Family Residential (R-1) site to Planned Development (PD) for a proposed 40-unit senior apartment complex on 2.01 acres.

OWNER: Orville Lee Keller/Howard James Keller
28531 E. Lemon Ave.
Escalon, CA 95320

APPLICANT: Mahesh Khatwani
433 Airport Blvd., Suite 224
Burlingame, CA 94010

ARCHITECT: Edmond Jacobs, ETJ Architect
2301 Coffee Road, Suite B
Modesto, CA 95355

LOCATION/APN: The proposed project is located on the south side of Pocket Avenue, west of Litt Road, south of Eisenhower Drive, and east of Roselle Avenue. The address is 3318 Pocket Avenue (APN: 075-090-063).

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

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

ENVIRONMENTAL DETERMINATION: The General Plan and Zoning Code Amendments are exempt from additional environmental analysis pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects.

PROJECT PLANNER: Donna M. Kenney, Planning and Building Manager

{CW112820.1}

RECOMMENDATION: Approval of Resolution No. 2022-004 to recommend to the City Council the approval of a General Plan Amendment and approval of Resolution No. 2022-005 to recommend to the City Council the approval of a Rezone based on the analysis and findings presented for the Pocket Senior Apartments.

ACRONYMS: CEQA – California Environmental Quality Act
CFD – Community Facilities District
DU – Dwelling Units
HDR – Higher Density Residential
LDR – Low Density Residential
LID – Low Impact Design
PD – Planned Development
RMC – Riverbank Municipal Code

EXECUTIVE SUMMARY

The proposed project consists of a General Plan Amendment (GPA) to Higher Density Residential and a Zoning Ordinance Amendment (Rezone) to Planned Development (PD) for future senior apartment units on an approximately 2 acre lot with an overall density of 19.9 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).

BACKGROUND

The subject property is located on the south side of Pocket Avenue, west of Litt Road, south of Eisenhower Drive, and east of Roselle Avenue. The total area of the site is 2.01 acres and the formal address is 3318 Pocket Avenue. The existing site contains a single-family residence, a large barn, and a garage. The property is surrounded by single-family residential housing to the north, east, and west. There are some vacant undeveloped lots located southwest of the subject property (Attachment 3).

PROJECT ANALYSIS

A. Site Design

The applicant has submitted a concept site plan for the senior apartments (Attachment 4). It is intended to inform and provide a visual graphic of 40 future senior units to the Planning Commission. The project requires architecture and site plan approval through a Development Plan application which will be submitted by the applicant if the amendment and rezone are approved. In the age of covid, it is difficult to get the financing and bonds that were available pre-covid. The developer would like to be granted the amendment and rezone before investing further in the project.

{CW112820.1}

B. Transportation and Circulation

Pocket Avenue is already improved with curb, gutter, and sidewalk. There are two travel lanes and parking on both sides of the street. The subject property currently has two driveways which will be reduced to one gated driveway. Stanislaus Consolidated Fire District has reviewed the concept plan and will require pedestrian gates from the sidewalk through the fence in order to bring a fire hose to the apartment units shown along the side property lines. Future residents and guests will use a parking lot in the center of the property and there is street parking at the project frontage.

A neighbor on the north side of Pocket Avenue has expressed concern about an increase in traffic if the future project is constructed and has submitted a neighborhood petition requesting the City deny the project (Attachment 5).

C. General Plan Amendment

The existing General Plan designation for this project is Low Density Residential (LDR) which allows 0-8 dwelling units per net acre. The proposed General Plan Amendment would redesignate the project site from LDR to Higher Density Residential (HDR) which would allow the project to be built at 16+ dwelling units per net acre. The concept plan shows a total of forty (40) senior apartments on 2.01 acres for a total of 19.9 dwelling units per acre or 28.7 dwelling units per net acre. "Net" means exclusive of paved square footages like parking lots and driveways. Thus, the project's density is consistent with the HDR designation of the General Plan.

Pursuant to California Government Code section 65358 and the Riverbank General Plan, the Planning Commission must have answers to the GPA implementation questions (IMP-2) below before approving a project:

1. Is the proposed amendment in the public interest? *The General Plan Amendments are in the public interest because the amendment will change the General Plan Land Use Map from LDR to HDR for future housing.*
2. Is the proposed amendment consistent and compatible with the goals and the vast majority of policies of the General Plan? *The proposed amendment is compatible with the goals and objectives of the General Plan to build more housing and construct a variety of housing types for various demographics.*
3. Have the potential effects of the proposed amendment been evaluated and determined not to be detrimental to the public health, safety, or welfare? *The proposed amendment has been evaluated under CEQA and qualifies as exempt and not detrimental to the public health, safety, or welfare.*

{CW112820.1}

4. Has the proposed amendment been processed in accordance with the applicable provisions of the California Government Code and the California Environmental Quality Act? *The proposed amendment has been processed in accordance with the California Government Code, the Riverbank Municipal Code, and the California Environmental Quality Act.*

D. Rezone to Planned Development

The developer is requesting a rezone from Single Family Residential (R-1) to Planned Development (PD) for future housing. The Table below shows the development standards of the Multiple Family (R-3) zoning district since the concept site plan shows apartments. If the developer requests relief from any of the R-3 standards when he submits a Development Plan, he will need to offer amenities on a 1:1 basis. These amenities could include enhanced landscaping throughout the site, a colored concrete or brick crosswalk, decorative street lighting (similar to Crossroads West), pavers or colored pavement at entrance, enhanced decorative landscaping at entrance, upgrade sliding doors to French doors, and enhanced open space furniture.

Type of Standard	HDR Zoning Standards
Lot Size	For each unit in excess of two dwelling units – 2,000 square feet, not to exceed 20 units per net acre.
Lot Width	55 feet minimum
Lot Depth	100 feet minimum
Density	16+ units per net acre
Height	45 feet maximum
Front Setback	15 feet minimum
Garage Setback	N/A
Side Setback	25 feet minimum
Rear Setback	25 feet minimum
Lot Coverage	60% maximum
Accessory Height	15 feet maximum
Local Street Width	64 feet
Sidewalks	Both sides of street
Onsite Parking	0-1 parking space per zero to one-bedroom units
Street Parking	Both sides of street

Rezone Findings

In recommending approval of the Rezone to the City Council (Attachment 2 Exhibit A), the Planning Commission must find the project meets the required findings of fact:

1. Each individual unit of the development if built in stages, as well as the total development, can exist as an independent unit capable of creating a good environment in the locality and being in any stage as desirable and stable as the

{CW112820.1}

total development. *A housing development could be built in stages and exist as independent buildings, capable of creating a good environment.*

2. The uses proposed will not be a detriment to the present and proposed surrounding land uses but will enhance the desirability of the area and have a beneficial effect. *The site is currently underutilized with a single-family dwelling unit, garage, and barn which will be demolished. The concept plan shows much needed senior housing. The future project will increase the City's diverse and compact housing stock.*
3. Any deviation from the standard ordinance requirements is warranted by the unusual design and additional amenities incorporated in the development plan which offers certain redeeming features to compensate for any deviations that may be permitted. *A developer is required to provide amenities for any deviations from development standards in a Development Plan and may include amenities such as decorative street lighting, pavers or colored pavement at entrance, and open space furniture.*
4. The principles incorporated in the proposed master plan identify unique characteristics which could not otherwise be achieved under other zoning districts. *The concept plan's housing density cannot be achieved under other zoning districts.*
5. Where a PD rezone is initiated by the City, the previous findings are not required. *This PD was not initiated by the City.*

ENVIRONMENTAL DETERMINATION

The General Plan and the Zoning Code Amendments are exempt from additional environmental analysis pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects.

PUBLIC NOTICE

On April 4, 2022, public notices for the Planning Commission hearing were mailed to interested parties and property owners (84) within 300 feet of the project location. The Planning Commission hearing notice was published in the Riverbank News on April 6, 2022. 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 April 4, 2022. The subject property public notice sign was posted on March 9, 2022. This item was continued at the March 15, 2022 Planning Commission meeting due to a typo in the public notices. Staff had the developer change the date on the posting sign to April 19th and modify the typo from "Medium Density Residential" to "Higher Density Residential".

{CW112820.1}

ATTACHMENTS

1. Planning Commission Resolution No. 2022-004 (General Plan Amendment)
2. Planning Commission Resolution No. 2022-005 (Zoning Ordinance Amendment)
Exhibit A – Draft Ordinance No. 2022-XXX
3. Aerial of the Site
4. Concept Site Plan
5. Petition submitted 4-13-2022

Respectfully Submitted By:

Donna M. Kenney

Donna M. Kenney
Planning and Building Manager

{CW112820.1}

**City of Riverbank
Planning Commission
Resolution No. 2022-004**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF RIVERBANK, CALIFORNIA RECOMMENDING TO THE
CITY COUNCIL THE APPROVAL OF A GENERAL PLAN
AMENDMENT WHICH WOULD REDESIGNATE 2.01 ACRES
LOCATED AT 3318 POCKET AVENUE (APN 075-090-063) TO
HIGHER DENSITY RESIDENTIAL (HDR)**

WHEREAS, an application has been received from Mahesh Khatwani with a proposal to demolish an existing single-family residence, garage, and barn on 2.01 acres, and to construct a forty (40) unit age-restricted apartment complex; and

WHEREAS, an application from Mahesh Khatwani requests a General Plan Amendment to change the current designation of 3318 Pocket Avenue from Low Density Residential (LDR, which allows for a net density of 0-8 dwelling units per acre), to Higher Density Residential (HDR, which allows for a net density of 16+ units per acre); and

WHEREAS, the project site is currently zoned Single Family Residential (R-1) and the application includes a request to rezone the property to Planned Development (PD); and

WHEREAS, Government Code Section 65353 requires the Planning Commission to hold at least one noticed, public hearing on any proposed General Plan Amendment; and

WHEREAS, the Government Code further requires that the City Council receive input from the Planning Commission on any proposed General Plan Amendment; and

WHEREAS, the notice of the public hearing on the General Plan Amendment was published in the *Riverbank News*, a newspaper of general circulation, on April 6, 2022; and

WHEREAS, the notices of the public hearing on the General Plan Amendment were mailed to all property owners within 300 feet of the property on April 4, 2022, according to the most recent assessor's roll; and

WHEREAS, the Planning Commission has reviewed the General Plan Amendment and conducted a public hearing on April 19, 2022 in the manner prescribed by law; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED THAT THE PLANNING COMMISSION OF THE CITY OF RIVERBANK HEREBY RECOMMENDS CITY COUNCIL CONDITIONAL APPROVAL OF GENERAL PLAN AMENDMENT NO. 01-2021, BASED ON THE FOLLOWING FINDINGS:

1. General Plan Amendment Findings: That pursuant to California Government Code section 65358 and the Riverbank General Plan, the Planning Commission finds as follows:
 - a. The General Plan Amendment is in the public interest because the General Plan Amendment will change the General Plan Land Use Map to comply with the proposed multi-family housing zoning.
 - b. The General Plan Amendment is consistent and compatible with the goals and majority of the policies of the General Plan.
 - c. The General Plan Amendment is exempt from additional environmental analysis pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects.
 - d. The proposed amendment has been processed in accordance with the California Government Code, the Riverbank Municipal Code, and the California Environmental Quality Act.
2. That, based on the findings set forth in this resolution, the evidence in the City Staff Report, and such other evidence as received at the public hearings on this matter before the Planning Commission, the Planning Commission hereby recommends approval of the General Plan Amendment.
3. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution 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 resolution. The Planning Commission of the City of Riverbank hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, or 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.
4. The City finds that the General Plan is exempt from additional environmental analysis pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 19th of April, 2022, by the following roll call vote____:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

Approved:

Donna M. Kenney
Planning and Building Manager

Steve Link, Chairperson
Planning Commission

**City of Riverbank
Planning Commission
Resolution No. 2022-005**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF RIVERBANK, CALIFORNIA, RECOMMENDING TO THE
CITY COUNCIL THE APPROVAL OF ORDINANCE NO. 2022-
XXX TO REZONE TO PLANNED DEVELOPMENT 2.01 ACRES
LOCATED AT 3318 POCKET AVENUE APN: 075-090-063**

WHEREAS, an application has been received from Mahesh Khatwani with a proposal to demolish an existing single-family residence, garage, and barn on 2.01 acres, and to construct a forty (40) unit age-restricted apartment complex; and

WHEREAS, an application from Mahesh Khatwani requests a rezone to Planned Development (PD) on a project site currently zoned Single Family Residential (R-1); and

WHEREAS, the application also includes a request for a General Plan Amendment to change the current designation of 3318 Pocket Avenue from Low Density Residential (LDR, which allows for a net density of 0-8 dwelling units per acre), to Higher Density Residential (HDR, which allows for a net density of 16+ units per acre); and

WHEREAS, the Planning Commission held a public hearing on April 19, 2022 to consider Zoning Ordinance Amendment (Rezone) 02-2021; and

WHEREAS, notice of the public hearing on the Rezone was published in the *Riverbank News*, a newspaper of general circulation on April 6, 2022; and

WHEREAS, notices of the public hearing on the Rezone were mailed to all property owners within three hundred (300) feet of the property, according to the most recent assessor's roll, on April 4, 2022; and

WHEREAS, the Planning Commission has reviewed the proposed Rezone and conducted a public hearing on April 19, 2022, in the manner prescribed by law; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED THAT THE PLANNING COMMISSION OF THE CITY OF RIVERBANK HEREBY RECOMMENDS CITY COUNCIL CONDITIONAL APPROVAL OF ORDINANCE NO. 2022-XXX, REZONING 2.01 ACRES TO PLANNED DEVELOPMENT, ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY THIS REFERENCE, BASED ON THE FOLLOWING FINDINGS:

1. Pursuant to California Government Code Section 65855, the recommendation to City Council shall include the relationship to the applicable general or specific plan.
 - a. The property identified in this action has requested a change in its General Plan Land Use Designation from Low Density Residential (LDR) to Higher Density Residential (HDR) and then a Rezone from Single Family Residential (R-1) to Planned Development (PD).
 - b. The proposed General Plan Amendment to HDR and the proposed Rezone to PD will maintain consistency between the General Plan and Zoning Code, pursuant to Government Code Section 65860.
2. The uses proposed will not be a detriment to the present and proposed surrounding land uses, but will enhance the desirability of the underutilized lot and have a beneficial effect.
3. Deviations from the standard ordinance requirements is warranted by the unusual concept design and additional amenities must be incorporated into the future site plan which offer certain redeeming features to compensate for any deviations that may be permitted under PD zoning.
4. The principles incorporated in the future Development Plan submittal must identify unique characteristics which could not otherwise be achieved under other zoning districts.
5. The PD rezone was not initiated by the City, so the previous findings are required.

Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution 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 resolution. The Planning Commission of the City of Riverbank hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, or 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.

The City finds that Pursuant to the California Environmental Quality Act, the rezone is exempt from additional environmental analysis pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 19th of April, 2022, by the following roll call vote___:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest:

Approved:

Donna M. Kenney
Planning and Building Manager

Steve Link, Chairperson
Planning Commission

Attachment: **Exhibit A** – Draft City Council Ordinance No. 2022-XXX

**CITY OF RIVERBANK
ORDINANCE NO. 2022-TBD**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK
APPROVING THE REZONING OF 2.01± ACRES TO PLANNED DEVELOPMENT,
LOCATED AT 3318 POCKET AVENUE (APN 075-090-063) –
A PROJECT KNOWN AS THE POCKET AVENUE SENIOR APARTMENTS**

WHEREAS, an application has been received from Mahesh Khatwani with a proposal to demolish an existing single-family residence, garage, and barn on 2.01 acres, and to construct a forty (40) unit age-restricted apartment complex; and

WHEREAS, the City of Riverbank Planning Commission conducted a Public Hearing on Tuesday, April 19, 2022, to consider this proposed Rezone Ordinance (the "Rezone Ordinance") in Riverbank; and

WHEREAS, the City Council held a properly noticed public hearing on the proposed Rezone Ordinance, and considered the Planning Commission recommendations, and any public comments and all documents or testimony received; and

WHEREAS, the City Council for the City of Riverbank has made the following findings for adoption:

1. An application has been received from Mahesh Khatwani with a proposal to demolish an existing single-family residence, garage, and barn on 2.01 acres, and to construct a forty (40) unit age-restricted apartment complex; and
2. The project site has a General Plan Amendment to change the current designation from Low Density Residential (LDR, which allows for a net density of 0-8 dwelling units per acre), to Higher Density Residential (HDR, which allows for a net density of 16+ units per acre) (the "General Plan Amendment"); and
3. The project site is currently zoned Single Family Residential (R-1) and the application also includes a request to rezone the property to Planned Development (PD); and
4. Notice of the public hearing on the proposed General Plan Amendment and Rezone Ordinance was published in the *Riverbank News*, a newspaper of general circulation, on April 6, 2022; and,
5. Notices of the public hearing on the proposed General Plan Amendment and Rezone Ordinance were mailed to all property owners within 300 feet of the property, according to the most recent assessor's roll, on April 4, 2022; and

6. The City finds that Pursuant to the California Environmental Quality Act, the Project is exempt from additional environmental analysis pursuant to CEQA Guidelines Section 21159.21 (a-j) Exemption for Qualified Housing Projects. The Rezone Ordinance 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.

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

Section 1: The City Council of the City of Riverbank approves Rezoning 2.01 acres to Planned Development zoning for a property located at 3318 Pocket Avenue (APN 075-090-063) to make it consistent with a General Plan Designation of Higher Density Residential (HDR).

Section 2: The City Clerk is hereby directed to cause the Official Zoning Map of the City of Riverbank to be revised to reflect the rezoning approved by this ordinance.

Section 3: Constitutionality, severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this chapter, or any part thereof is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

Section 4: This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in a newspaper of general circulation at least fifteen (15) days prior to its effective date or a summary of the Ordinance is 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 ____ 2022; motioned by Councilmember _____, seconded by Council Member _____, and upon roll call was carried by the following vote ____:

AYES:

NAYS:

ABSENT:

ABSTAIN:

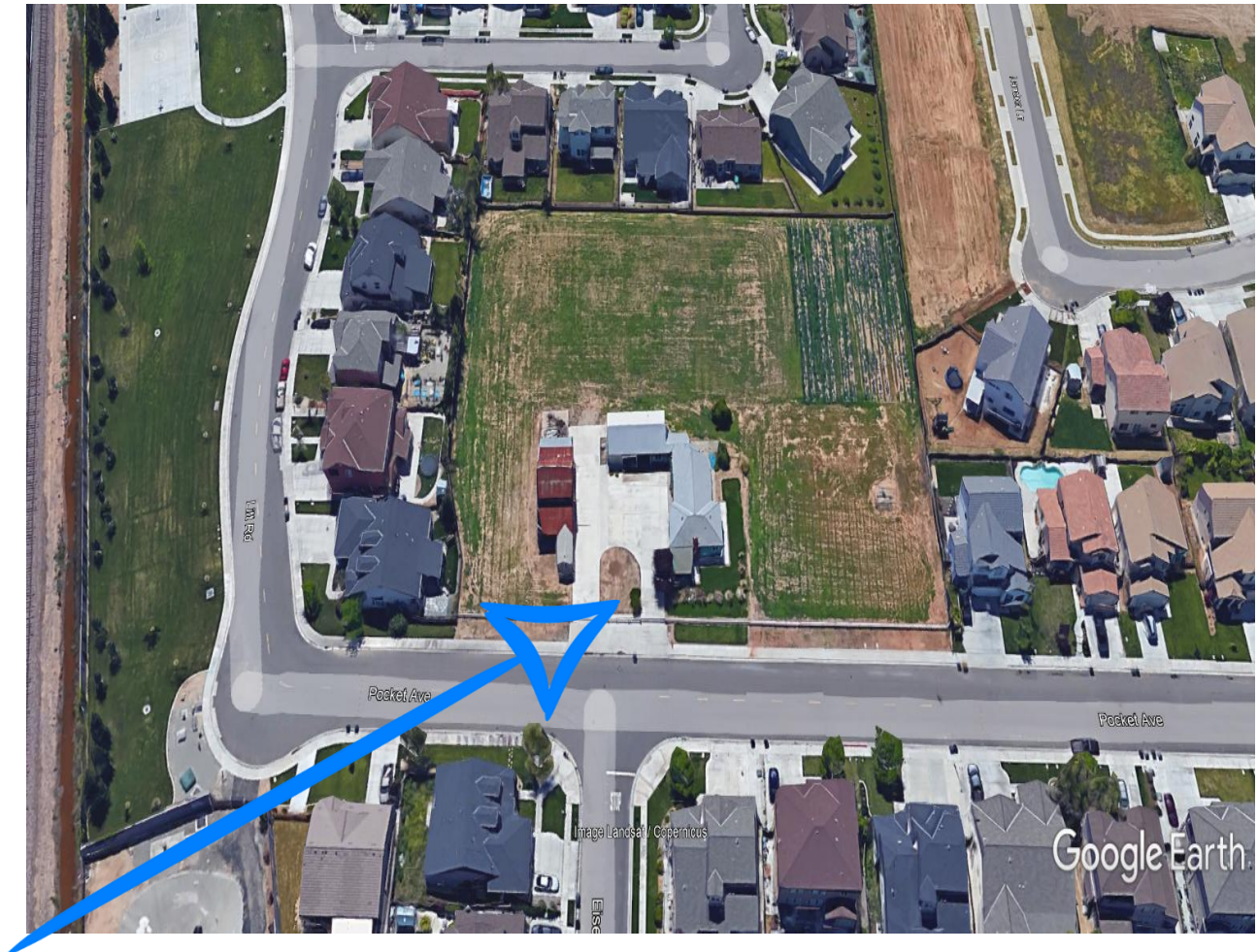
ATTEST:

APPROVED:

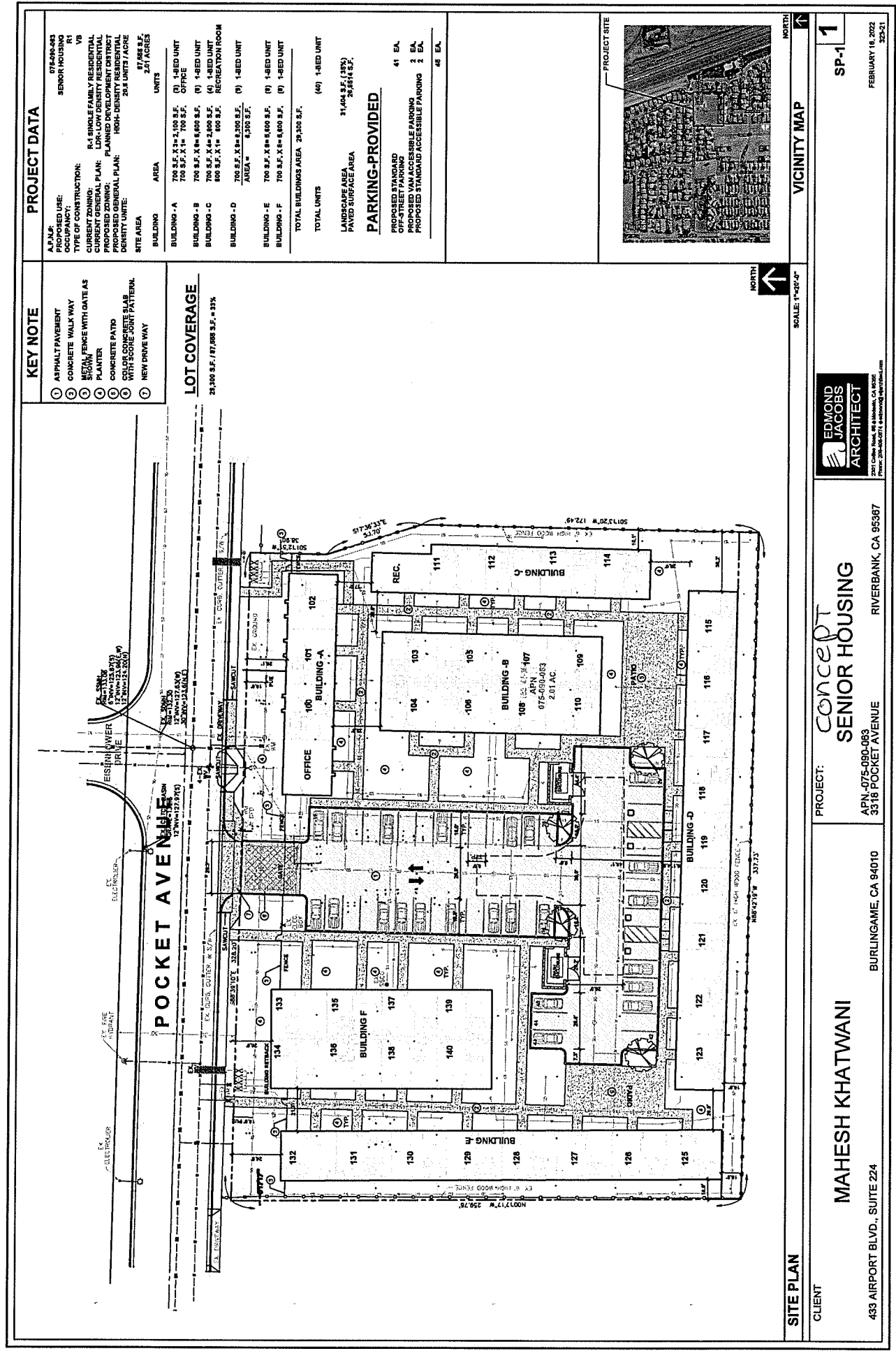
**Kathy L. Teixeira, Interim CMC
City Clerk**

**Richard D. O'Brien
Mayor**

ATTACHMENT 3



3318 Pocket Avenue



KEY NOTE

- 1 ASPHALT PAVEMENT
- 2 CONCRETE WALK WAY
- 3 METAL FENCE WITH GATES AS SHOWN
- 4 PLANTER
- 5 CONCRETE PATIO
- 6 COLLECTOR DRAINAGE SLAB
- 7 COLLECTOR DRAINAGE PATTERN
- 8 NEW DRIVE WAY

PROJECT DATA

A.P.N. 076490-083
PROPOSED USE: SENIOR HOUSING
OCCUPANCY: R1
TYPE OF CONSTRUCTION: R1 SINGLE FAMILY RESIDENTIAL
CURRENT ZONING: LOW DENSITY RESIDENTIAL
CURRENT GENERAL PLAN: PLANNED DEVELOPMENT DISTRICT
PROPOSED ZONING: HIGH DENSITY RESIDENTIAL
PROPOSED GENERAL PLAN: HIGH DENSITY RESIDENTIAL
DENSITY UNIT: 25.8 UNITS / ACRE
SITE AREA: 87,688 S.F.
2.51 ACRES
BUILDING AREA: 770 S.F. X 30 = 23,100 S.F.
BUILDING - A: 770 S.F. X 30 = 23,100 S.F.
BUILDING - B: 770 S.F. X 30 = 23,100 S.F.
BUILDING - C: 770 S.F. X 30 = 23,100 S.F.
BUILDING - D: 770 S.F. X 30 = 23,100 S.F.
BUILDING - E: 770 S.F. X 30 = 23,100 S.F.
BUILDING - F: 770 S.F. X 30 = 23,100 S.F.
TOTAL BUILDING AREA: 28,320 S.F.
TOTAL UNITS: (40) 1-BED UNIT
LANDSCAPE AREA: 31,454 S.F. (36%)
PAVED SURFACE AREA: 26,884 S.F.
PARKING-PROVIDED
PROPOSED STANDARD PARKING: 41 EA.
PROPOSED VALE ACCESSIBLE PARKING: 2 EA.
PROPOSED STANDARD ACCESSIBLE PARKING: 2 EA.
TOTAL: 45 EA.

LOT COVERAGE

25,300 S.F. / 87,688 S.F. = 29%

SITE PLAN

CLIENT

MAHESH KHATWANI

433 AIRPORT BLVD., SUITE 224

PROJECT:

concept
SENIOR HOUSING

APN-075-090-083
3318 POCKET AVENUE

RIVERBANK, CA 95387



EDMOND JACOBS ARCHITECT
2201 Cedar Road, Suite 200, San Jose, CA 95128
(408) 291-1111 • EJC@edmondjacobs.com

SCALE: 1"=30'-0"

VICINITY MAP

NORTH

1
SP-1

FEBRUARY 18, 2022
22-01

