



CITY OF RIVERBANK
**REGULAR CITY COUNCIL AND
LOCAL REDEVELOPMENT AUTHORITY BOARD
MEETINGS**

(The City Council also serves as the LRA Board)
City Hall North • Council Chambers
6707 Third Street • Suite B • Riverbank • CA • 95367

AGENDA

TUESDAY, JANUARY 8, 2019– 6:00 P.M.

(THE AGENDA PACKET IS POSTED AT THE CITY CLERK'S OFFICE AND AT WWW.RIVERBANK.ORG)

- CALL TO ORDER:** Mayor/Chair Richard D. O'Brien
- FLAG SALUTE:** Mayor/Chair Richard D. O'Brien
- INVOCATION:** Riverbank Ministerial Association
- ROLL CALL:** Mayor/Chair Richard D. O'Brien
Vice Mayor/Chair Darlene Barber-Martinez (CM-D4)
Council/Authority Member District 1 Luis Uribe
Council/Authority Member District 2 Cindy Fosi
Council/Authority Member District 3 Cal Campbell

CHANGES TO THE AGENDA: Mayor/Chair Richard D. O'Brien

CONFLICT OF INTEREST

Any Council/Authority 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.
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1. PRESENTATIONS There are no presentations.

2. 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 City Council/LRA 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 City Council/LRA Board.

3. CONSENT CALENDAR

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

Item 3.A: Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Item 3.B: Approval of the October 23, 2018, City Council and Local Redevelopment Authority Minutes.

Item 3.B-1: Approval of the November 13, 2018, City Council and Local Redevelopment Authority Minutes.

Recommendation: It is recommended that City Council/LRA Board approve the Consent Calendar items by roll call vote.

4. UNFINISHED BUSINESS There are no items to consider.

5. PUBLIC HEARINGS

The public notice for Items 5.1 and 5.2 were published in the Riverbank News on 12/26/2018.

Item 5.1: **First Reading by Title Only and Introduction of a Proposed Ordinance Approving a Rezone of 1.1± Acres to Planned Development Located at Seventh and Sierra Streets (APN 312-015-023) a Project Known as Riverbank Commons** – It is recommended that the City Council conduct the public hearing for the first reading of the proposed ordinance to consider its approval; if approved, the second reading of the ordinance by title only will be scheduled for the next regular City Council meeting on January 22, 2019, for consideration of its adoption.

The Planned Development Rezone 01-2017, Architecture & Site Plan Review 02-2017, Tentative Subdivision Map 01-2017 (Dept. File # 17-0015) – Edmond Shamass, applicant; Edward Touma, owner – a fourteen lot gated community including Lot A which consists of streets, parking area, utilities, landscaping, and a small park, which was considered by the Planning Commission, and by a 5-0 vote on October 16, 2018, approved the Tentative Map and Architecture & Site Plan Review for the Project and recommended City Council approval of the proposed ordinance.

Item 5.2: **First Reading By Title Only and Introduction of a Proposed Ordinance Amending Chapter 96: Trees of Title IX: General Regulations by Adding a New Section §96.20: Dangerous Trees, Mistletoe a Nuisance, to the Riverbank Code of Ordinances** – It is recommended that the City Council conduct the public hearing for the first reading of the proposed ordinance to consider its approval; if approved, the second reading of the ordinance by title only will be scheduled for the next regular City Council meeting on January 22, 2019, for consideration of its adoption.

6. NEW BUSINESS

Item 6.1: **Neighborhood Improvement Officer I Half-time Position Review** – Staff recommends that the City Council listen to the presentation and extend the half-time position for an additional three (3) months or dictate an alternative timeline.

Item 6.2: **Annual Compliance Review of the Development Agreement (01-2017) between the City of Riverbank and PACAFI Cooperative, Inc., a California Cooperative Corporation doing business as “Flavors”** – Find the applicant(s) in compliance with the Development Agreement for the time period of January 1, 2018 to January 1, 2019.

Item 6.3: **Consideration of a Resolution Creating a Permanent Moratorium on the Processing and Issuance of Additional Permits for a Cannabis Dispensary within the City of Riverbank and Directing Staff to Bring Forward an Amendment to Riverbank Municipal Code Chapter 120: Cannabis Regulations** – It is recommended that the City Council review the provided information, take public comment, and chose one of the following options:

1. Approve the proposed Resolution 2019-XXX to make the moratorium on cannabis dispensaries permanent and direct staff to bring forward an amendment to Chapter 120 of the Riverbank Municipal Code; or
2. Allow the existing moratorium to expire on January 23, 2019.

Item 6.4: **Annual Consideration of City Council Appointments to Intergovernmental Boards and Committees and City Council/LRA Appointments to Internal City Committees for the Year 2019** – It is recommended that the City Council / Local Redevelopment Authority Board:

- 1) review the appointment lists; and
- 2) volunteer or nominate a member of the City Council/LRA to serve as the representative; and
- 3) by roll call vote, ratify the appointments for the year 2019.

7. COMMENTS/REPORTS

A brief report on notable attendance of a meeting or conference or other notable topics of City business shall be made. The Brown Act does not allow for discussion or action of items by the City Council during this time.

Item 7.1: Staff

Item 7.2: Council/Authority Member

Item 7.3: Mayor/Chair

8. CLOSED SESSION

The public will have a limit of 5 minutes to comment on Closed Session item(s) as set forth on the agenda prior to the City Council/LRA Board adjourning to Closed Session.

Item 8.1: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8
Property: 062-031-005, 062-031-006, 062-031-007
Agency Negotiator: Sean Scully, City Manager
Property Negotiator: Aemetis, Inc.

Item 8.2: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8
Property: APN 132-011-017
Agency Negotiator: Sean Scully, City Manager
Property Negotiator: Horisons Limited

Item 8.3: CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Government Code § 54956.9: (1) potential case

9. REPORT FROM CLOSED SESSION

Item 9.1: Report from Closed Session on Item 8.1: **CONFERENCE WITH REAL PROPERTY NEGOTIATORS** – Horisons Limited

Item 9.2: Report from Closed Session on Item 8.2: **CONFERENCE WITH REAL PROPERTY NEGOTIATORS** – Aemetis, Inc.

Item 9.3: Report from Closed Session on Item 8.3: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:** (1) potential case

ADJOURNMENT (The next regular City Council meeting – Tue., January 22nd at 6: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 Brown Act. Posted this day 4th day of January, 2019

/s/ Annabelle H. Aguilar, CMC, City Clerk / LRA Recorder

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 City Clerk's Office at (209) 863-7122 or cityclerk@riverbank.org. Notification of (72) 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 Council/LRA Board shall be in English and anyone wishing to address the Council 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.

Meeting Schedule	<u>Regular City Council Meetings:</u> 6:00 p.m. on the 2nd and 4th Tuesday of every month, unless otherwise noticed. <u>Local Redevelopment Authority Board:</u> (The City Council also serves as the LRA Board.) Meets on an "as needed" basis. The City Council also serves as the LRA Board.
City Council / LRA Agenda & Reports	The City Council/LRA Board agenda is posted pursuant to the California Brown Act, which only requires these agenda title pages to be posted near the entrance of the location where the meeting is to be held and, when available, on the City's website. Additional documents 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 City Clerk's Office, 6707 Third Street, Riverbank, CA and at www.riverbank.org upon distribution to a majority of the City Council/LRA Board. 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 regular meeting of the City Council/LRA Board, for which special notice has been given. During a specified portion of the hearing, any interested party is invited to present written or oral protests or support for the subject matter under consideration. Written testimony sent or delivered to the City Clerk must be received no later than <u>5:00 p.m. on the day of the meeting</u> to allow for their distribution to the City Council/LRA Board. Preparations for the meeting are conducted between 5:00 p.m. and 6:00 p.m. and therefore the City Clerk is not available during this time.
Televised / Video of Meetings	• Charter – Channel 2 • AT&T Uverse – Channel 99 • www.riverbank.org – video icon – under Agendas and Minutes link
City Hall Hours	City Hall is open Monday – Thursday; 7:30 am – 5:30 pm and Fridays: 8:00 am – 5:00 pm; CLOSED alternating Fridays
Questions	Contact the City Clerk at (209) 863-7122 or aaguilar@riverbank.org

RIVERBANK CITY COUNCIL / LRA AGENDA ITEM NO. 3.A

SECTION 3: CONSENT CALENDAR

Meeting Date:	January 8, 2019
Subject:	Waiver of Readings
From:	Sean Scully, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk / LRA Recorder

RECOMMENDATION

It is recommended that the City Council / LRA Board approve the waiver of readings of any proposed ordinances and resolutions for consideration, except by title.

SUMMARY

In lieu of reading the entire text of a proposed ordinance or resolution that is introduced for consideration for adoption and approval, by majority vote, the City Council may waive the reading of the text and introduce the ordinance or resolution by title only for the record.

The proposed ordinances and resolutions, and any related documents that are part of the agenda packet, are available for review by the public on the City's website and in the City Clerk's office at City Hall (North) upon distribution to a majority of the City Council; typically 72 hours prior to the scheduled date and time of the meeting.

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENTS

There are no attachments to this report.

**RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY
AGENDA ITEM NO. 3.B**

SECTION 3: CONSENT CALENDAR

Meeting Date:	January 8, 2019
Subject:	Approval of the October 23, 2018, City Council and Local Redevelopment Authority Minutes
From:	Sean Scully, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk / LRA Recorder

RECOMMENDATION

It is recommended that the City Council / Local Redevelopment Authority Board approve the City Council /LRA Meeting Minutes as presented.

SUMMARY

The Draft Minutes of the October 23, 2018, regular City Council and the Local Redevelopment Authority Board meetings have been prepared for review and approval.

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENT

1. October 23, 2018, City Council and LRA Minutes



**City of Riverbank
REGULAR CITY COUNCIL AND
LOCAL REDEVELOPMENT AUTHORITY BOARD**
(The City Council also serves as the LRA Board)

**MINUTES OF
TUESDAY, OCTOBER 23, 2018**

Verbatim proceedings of the meetings may be viewed on-line or a copy may be provided for a fee.

CALL TO ORDER:

The City Council and Local Redevelopment Authority Board of the City of Riverbank met at 6:00 p.m. on this date at the Riverbank City Council Chambers, 6707 Third Street, Suite B, Riverbank, California, with Mayor/Chair Richard D. O'Brien presiding.

FLAG SALUTE:

Mayor/Chair Richard D. O'Brien

INVOCATION:

Pastor Fred Wood, Riverbank Ministerial Association

ROLL CALL:

Present

Mayor/Chair Richard D. O'Brien
Vice Mayor/Chair Darlene Barber Martinez (CM-D4)
Council/Authority Member District 2 Cindy Fosi
Council/Authority Member Cal Campbell
Council/Authority Member Leanne Jones Cruz

AGENDA CHANGES: Mayor/Chair Richard D. O'Brien – *There were no changes.*

CONFLICT OF INTEREST

Any Council/Authority 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.

No one declared a conflict.

1. PRESENTATIONS

Item 1.1: Proclamation – Bells of Peace – November 11, 2018. – *Mayor O'Brien read the proclamation.*

Item 1.2: State of Education – Stanislaus County Office of Education. – *Stanislaus County Supervisor Tom Changnon made the presentation.*

2. 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 City Council/LRA 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 City Council/LRA Board.

Mayor O'Brien commented and made clarification on the Candidates' Forum topics.

Diane Talbert, Riverbank Chapter of Royal Neighbors, announced the Annual Veteran's Luncheon.

3. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council/LRA Board unless otherwise requested by an individual Council/Authority Member for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

Item 3.A: Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Item 3.B: Approval of the October 9, 2018, City Council and Local Redevelopment Authority Minutes [as amended after posting].

Item 3.C: A Resolution [No. 2018-073] Approving Amendments to the Stanislaus Council of Governments (StanCOG) Bylaws and Execution of an Amended and Restated Joint Powers Agreement.

Recommendation: It is recommended that City Council/LRA Board approve the Consent Calendar items by roll call vote.

ACTION: *By motion moved and seconded (Barber-Martinez / Jones Cruz / passed 5-0) to approve Consent Calendar Items 3.A through 3.C as presented; motion carried by unanimous City Council and LRA Board roll call vote.*

AYES: Fosi, Campbell, Jones Cruz, Barber-Martinez, and Mayor/Chair O'Brien

NAYS: None / ABSENT: None / ABSTAINED: None

4. UNFINISHED BUSINESS

There were no items to consider.

5. PUBLIC HEARINGS

The public notice for Item 5.1 was published in the legal section of the Riverbank News on 10/3/2018, and a Display ad on 10/10/2018.

Item 5.1: A Resolution [No. 2018-074] Adopting a 2.5% Consumer Price Index Increase in Rates for Solid Waste Disposal Services Pursuant to the 2014 Executed Franchise Agreement with Gilton Solid Waste, Inc. – It

is recommended that the City Council consider adopting a resolution approving a 2.5% Consumer Price Index (CPI) increase in rates for solid waste disposal services pursuant to the executed franchise agreement with Gilton Solid Waste, Inc.

Assistant City Manager/Director of Finance Marisela Garcia presented the staff report.

Mayor O'Brien opened the public hearing at 6:41 p.m.

- *Mr. Scott Mc Ritchie commented on monthly billing.*

Mayor O'Brien closed the public hearing at 6:42 p.m.

Councilmember Campbell commented on payment options.

Mayor O'Brien re-opened the public hearing at 6:44 p.m.

- *Mrs. Marilyn Mc Ritchie commented on the options of payment and adding it as a post script.*

Mayor O'Brien closed the public hearing at 6:45 p.m.

ACTION: *By motion moved and seconded (O'Brien / Campbell / passed 5-0) to adopt Resolution No. 2018-074 adopting a 2.5% Consumer Price Index Increase in Rates for Solid Waste Disposal Services Pursuant to the 2014 Executed Franchise Agreement with Gilton Solid Waste, Inc. as presented; motion carried by unanimous City Council roll call vote.*

AYES: Fosi, Campbell, Jones Cruz, Barber-Martinez, and Mayor O'Brien

NAYS: None / ABSENT: None / ABSTAINED: None

6. NEW BUSINESS

Item 6.1: **A Resolution [No. 2018-075] Amending the City of Riverbank Compensation Plan to Reflect the New Salary Range for the Accounting Manager Position from Range 146 to Range 166** – It is recommended that the City Council consider approving a Resolution amending the City of Riverbank's compensation plan to reflect the new salary range for the Accounting Manager position.

Assistant City Manager/Director of Finance presented the staff report.

Public comment was made by Pastor Fred Wood.

ACTION: *By motion moved and seconded (Barber-Martinez / Fosi / passed 5-0) to adopt Resolution No. 2018-075 amending the City of Riverbank Compensation Plan to Reflect the New Salary Range for the Accounting Manager Position from Range 146 to Range 166 as presented; motion carried by unanimous City Council roll call vote.*

AYES: *Fosi, Campbell, Jones Cruz, Barber-Martinez, and Mayor O'Brien*

NAYS: *None / ABSENT: None / ABSTAINED: None*

Item 6.2: **A Resolution [No. 2018-076] to Award Bid for the Wastewater Treatment Plant (WWTP) Pond 9 Levee Project to Garrett Thompson Construction, Inc., and Authorize the City Manager to Execute Future Change Orders and Authorize the Re-Allocation of \$275,000 from the Rate Study Funded Line Replacement Projects to the Rate Study-Funded Pond 9 at WWTP Project** – It is recommended that City Council adopt a Resolution approving the following three (3) actions by a roll call vote:

- 1) Award bid to the lowest responsible bidder, Garrett Thompson Construction, Inc.; and
- 2) Authorize the City Manager to execute Change Orders within total project budget; and
- 3) Authorize the re-allocation of \$275,000 from the Rate Study-Funded Line Replacement Projects to the Rate Study-Funded Pond 9 at WWTP Project.

Assistant City Manager/Director of Finance Marisela Garcia and City Manager Sean Scully presented the staff report.

Vice Mayor Barber-Martinez and Mayor O'Brien commented.

ACTION: *By motion moved and seconded (Campbell / Barber-Martinez / passed 5-0) to adopt Resolution No. 2018-076 awarding the Bid for the Wastewater Treatment Plant (WWTP) Pond 9 Levee Project to Garrett Thompson Construction, Inc., and Authorize the City Manager to Execute Future Change Orders and Authorize the Re-Allocation of \$275,000 from the Rate Study Funded Line Replacement Projects to the Rate Study-Funded Pond 9 at WWTP Project as presented; motion carried by unanimous City Council roll call vote.*

AYES: *Fosi, Barber-Martinez, Campbell, Jones Cruz, and Mayor O'Brien*

NAYS: *None / ABSENT: None / ABSTAINED: None*

Item 6.3: **Information on the 9th Circuit Decision Martin v. Boise Implications to Public Space** – It is recommended that the City Council receive an update on recent case law which has implications for the use of public spaces, and provide direction to create policy on this matter.

City Manager Sean Scully presented the staff report.

City Council and Staff discussed the item.

Public comments were made by Mr. Ben Talbert, Mrs. Talbert, Pastor Fred Wood, and Ms. Eva Nash.

City Council directed to have staff research their concepts, and place it as an item for strategic planning discussion, with options.

7 COMMENTS/REPORTS

A brief report on attendance of a meeting or conference or other notable topics of business shall be made. The Brown Act does not allow for discussion or action by the City Council.

Item 7.1: Staff - *there were no staff comments.*

Item 7.2: Council/Authority Member

- *Vice Mayor/Chair Barber-Martinez announced the Toys for Tots event and the “Shop with a Cop” event.*

Item 7.3: Mayor/Chair

Mayor/Chair O’Brien: Commented on the recent Bank holdup, and the need to heighten the priority of cameras to monitor traffic and City Park areas.

8. CLOSED SESSION

The public will have a limit of 5 minutes to comment on Closed Session item(s) as set forth on the agenda prior to the City Council/LRA Board recessing into Closed Session.

Item 8.1: **LIABILITY CLAIMS**

Pursuant to Government Code § 54956.95
Claimant: Berg Injury Lawyers on behalf of Enriqueta Casas
Agency claimed against: City of Riverbank

Item 8.2: **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code Section 54956.8
Property: 062-031-005, 062-031-006, 062-031-007
Agency Negotiator: Sean Scully, City Manager
Property Negotiator: Aemetis, Inc.

Item 8.3: **CONFERENCE WITH LABOR NEGOTIATORS**

Pursuant to Government Code § 54957.6
Agency representative: Sean Scully, City Manager
Employee organizations: Mid-Management Bargaining Unit

Item 8.4: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to subdivision (b) of Government Code § 54956.9: (2) potential case

MAYOR/CHAIR O'BRIEN ANNOUNCED THE CLOSED SESSION ITEMS AND OPENED THE ITEMS FOR PUBLIC COMMENT; NO ONE SPOKE. THE MEETINGS WERE RECESSED AND CITY COUNCIL WENT INTO CLOSED SESSION AT 7:58 P.M.

9. REPORT FROM CLOSED SESSION

MAYOR/CHAIR O'BRIEN RECONVENED THE MEETINGS AT 8:33 P.M.

Item 9.1: Report from Closed Session on Item 8.1: **LIABILITY CLAIMS**

Mayor O'Brien reported that the City Council voted 5-0 in favor of rejecting the claim based on the late filing of the claim.

Item 9.2: Report from Closed Session on Item 8.2: **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Mayor O'Brien reported that direction was provided to staff.

Item 9.3: Report from Closed Session on Item 8.3: **CONFERENCE WITH LABOR NEGOTIATORS** – City Manager and Mid-Management Bargaining unit

Mayor O'Brien reported that direction was provided to staff.

Item 9.4: Report from Closed Session on Item 8.4: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:** (2) potential case

Mayor O'Brien reported that direction was provided to staff.

ADJOURNMENT

There being no further business, Mayor/Chair O'Brien adjourned the meetings at 8:33 p.m.

ATTEST: (Adopted 01/08/2019)

APPROVED:

Annabelle H. Aguilar, CMC
City Clerk / LRA Recorder

Richard D. O'Brien
Mayor / Chair

**RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY
AGENDA ITEM NO. 3.B-1**

SECTION 3: CONSENT CALENDAR

Meeting Date:	January 8, 2019
Subject:	Approval of the November 13, 2018, City Council and Local Redevelopment Authority Minutes
From:	Sean Scully, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk / LRA Recorder

RECOMMENDATION

It is recommended that the City Council / Local Redevelopment Authority Board approve the City Council /LRA Meeting Minutes as presented.

SUMMARY

The Draft Minutes of the, November 13, 2018, regular City Council and the Local Redevelopment Authority Board meetings have been prepared for review and approval.

FINANCIAL IMPACT

There is no financial impact to this item.

ATTACHMENT

1. November 13, 2018, City Council and LRA Minutes



**City of Riverbank
REGULAR CITY COUNCIL AND
LOCAL REDEVELOPMENT AUTHORITY BOARD**
(The City Council also serves as the LRA Board)

**MINUTES OF
TUESDAY, NOVEMBER 13, 2018**

Verbatim proceedings of the meetings may be viewed on-line or a copy may be provided for a fee.

CALL TO ORDER:

The City Council and Local Redevelopment Authority Board of the City of Riverbank met at 6:00 p.m. on this date at the Riverbank City Council Chambers, 6707 Third Street, Suite B, Riverbank, California, with Mayor/Chair Richard D. O'Brien presiding.

FLAG SALUTE: Mayor/Chair Richard D. O'Brien

INVOCATION: Reverend Charles Neal, Riverbank Ministerial Association

ROLL CALL: Mayor/Chair Richard D. O'Brien
Present Vice Mayor/Chair Darlene Barber-Martinez (CM-D4)
Council/Authority Member District 2 Cindy Fosi
Council/Authority Member Cal Campbell
Council/Authority Member Leanne Jones Cruz

AGENDA CHANGES: Mayor/Chair Richard D. O'Brien – *There were no changes.*

CONFLICT OF INTEREST

Any Council/Authority 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.

No one declared a conflict.

1. PRESENTATIONS

Item 1.1: Report on 2018 Cheese & Wine Festival. – *Chris Ricci, Event Coordinator of Chris Ricci Presents provided a report on the outcome of the recent event.*

2. 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 City Council/LRA 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 City Council/LRA Board.

No one spoke.

3. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council/LRA Board unless otherwise requested by an individual Council/Authority Member for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

Item 3.A: Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Item 3.B: A Resolution [No. 2018-077] to Approve Funding for the Repair of a Police Services Building Wall and Award the Bid to Bigler Construction.

Recommendation: It is recommended that City Council/LRA Board approve the Consent Calendar items by roll call vote.

ACTION: *By motion moved and seconded (Jones Cruz / Barber-Martinez / passed 5-0) to approve Consent Calendar Items 3.A and 3.B as presented; motion carried by unanimous City Council and LRA Board roll call vote.*

AYES: Fosi, Campbell, Jones Cruz, Barber-Martinez, and Mayor/Chair O'Brien

NAYS: None / ABSENT: None / ABSTAINED: None

4. UNFINISHED BUSINESS There were no items to consider.

5. PUBLIC HEARINGS

The public notice for Item 5.1 and 5.2 was published in the Riverbank News on 10/31/2018.

Item 5.1: **First Reading by Title Only and Introduction of a Proposed Ordinance Approving a Rezone of 1.1± Acres to Planned Development Located at Seventh and Sierra Streets (APN 312-015-023) a Project Known as Riverbank Commons** – It is recommended that the City Council conduct the public hearing for the first reading of the proposed ordinance to consider its approval; if approved, the second reading of the ordinance by title only will be scheduled for the next regular City Council meeting on December 11, 2018, for consideration of its adoption.

The Planned Development Rezone 01-2017, Architecture & Site Plan Review 02-2017, Tentative Subdivision Map 01-2017 (Dept. File # 17-0015) – Edmond Shamass, applicant; Edward Touma, owner – Riverbank Commons at Seventh and Sierra Streets, APN: 132-015-023 was

considered by the Planning Commission, and with a 5-0 vote on October 16, 2018, approved the Tentative Map and Architecture & Site Plan Review for the Project and recommended City Council approval of the proposed ordinance.

Planning and Building Manager Donna Kenney presented the staff report. City Council and Staff discussed the item.

Mayor O'Brien opened the public hearing at 6:26 p.m.; no one spoke, the hearing was closed.

ACTION: *By motion moved and seconded (Barber-Martinez / Jones Cruz / passed 5-0) to approve the first reading and introduction of the proposed Ordinance to initiate a second reading by title and consider its adoption at the next regular meeting on December 11, 2018, as presented; motion carried by unanimous City Council roll call vote.*

AYES: Fosi, , Campbell, Jones Cruz, Barber-Martinez and Mayor O'Brien

NAYS: None / ABSENT: None / ABSTAINED: None

Item 5.2: **First Reading by Title Only and Introduction of a Proposed Ordinance [No. 2018-007] Amending Chapter 92: Fire Protection and Prevention of Title IX: General Regulations by Repealing this Chapter in its Entirety and Replacing it with a New Chapter 92: Fire Protection and Prevention of the City of Riverbank Code of Ordinances** – It is recommended that the City Council conduct the public hearing for the first reading of the proposed ordinance to consider its approval; if approved, the second reading of the ordinance by title only will be scheduled for the next regular City Council meeting on December 11, 2018, for consideration of its adoption.

City Clerk Annabelle Aguilar presented the staff report, with a recommended revision to Section 92.42 (C), and City Manager Sean Scully explained the current difficulties of Police Services to impose any penalties for illegal fireworks violations.

After consideration of the proposed ordinance, City Council directed to include definitions of "Block Party Permit". Further discussion ensued on the restriction of the dates when legal fireworks could be discharged.

Mayor O'Brien opened the public hearing at 6:51 p.m.; no one spoke, the hearing was closed.

ACTION: *By motion moved and seconded (Fosi / Barber-Martinez / failed 2-3) to adopt the ordinance as proposed, keeping the date of June 28th through July 4th as the permitted period to discharge the purchased legal fireworks during the 4th of July Holiday; motion failed.*

AYES: Fosi, and Barber-Martinez

NAYS: Campbell, Jones Cruz, and Mayor O'Brien

ABSENT: None / **ABSTAINED:** None

ACTION: By motion moved and seconded (Campbell / O'Brien / passed 3-2) to adopt the proposed Ordinance No. 2018-007 with the staff recommended revision to Section 92.42 (C); to add a "Block Party Permit" definition; and change the permitted dates to discharge legal fireworks during the 4th of July Holiday to June 28 through July 6th in accordance with State regulations.

Motion carried by City Council roll call vote.

AYES: Campbell, Jones Cruz, and Mayor O'Brien

NAYS: Fosi and Barber-Martinez

ABSENT: None / **ABSTAINED:** None

6. NEW BUSINESS

Item 6.1: Approval of a Resolution to Waive or a Resolution to Defer System Development Fees for the Zaia & Zaia LLC, Del Rio Office Project – It is recommended that the City Council consider the petition from Zaia & Zaia LLC to waive or defer payments for the System Development Fees assessed on the construction of the Del Rio Office Project at permit issuance and:

1. Approve a Resolution (Attachment 1) to waive the fees;
2. Approve a Resolution (Attachment 2) to defer the fees; or
3. Deny the waiver and/or deferral

Planning and Building Manager Donna Kenney presented the staff report.

City Council and Staff discussion ensued.

Public Comment was made by the property owner Tony Zaia in favor to waive or defer the fees.

ACTION: By motion moved and seconded (O'Brien / Jones Cruz / passed 5-0) to adopt Resolution No. 2018-058 (proposed resolution #2) to defer the System Development Fees, except fees for Police/General Government and the 5% Administrative Fee, through a 10-year agreement to be brought to the City Council for approval; motion carried by unanimous City Council roll call vote.

AYES: Fosi, Barber-Martinez, Campbell, Jones Cruz, and Mayor O'Brien

NAYS: None / **ABSENT:** None / **ABSTAINED:** None

Item 6.2: Electronic Signage for Advertising City Events & Downtown Activity – It is recommended that the City Council give direction to staff regarding the use of electronic signage for advertising City events & downtown activity.

Director of Parks and Recreation presented the staff report. Ms. Linda Jost of USS United Sign Systems explained the sign options and potential costs.

City Council directed staff to return with a determination of proposed locations for the signs, and whether the option to lease or purchase a sign is the most feasible.

Item 6.3: **Identification of Barriers to Development at Patterson Road and Estelle Avenue** – The purpose of this item is to provide an update to the City Council on the removal of obstacles to development at Patterson Road and Estelle Avenue. It is an objective of the City’s Strategic Plan and addresses the City’s three year strategic goal to “Expand Economic Development Opportunities for Businesses.”

Planning and Building Manager Donna Kenney, Development Services Administration Manager Kathleen Cleek, and City Manager Sean Scully presented the staff report.

After discussion of the item, City Manager Sean Scully stated that a meeting would be scheduled and conducted with all stakeholders by January, 2019.

LRA Item 6.4: **Accept Report on Status of LRA Budget for First FY 2018/19** – It is recommended that the Local Redevelopment Authority (“LRA”) Board of Directors (“Board”) receive and approve the first quarter revenue and expenditure report (July 1, 2018 through September 30, 2018).

LRA Administrative Analyst II Melissa Holdaway presented the staff report (attached hereto).

ACTION: *By motion moved and seconded (Jones Cruz / Barber-Martinez / passed 5-0) to accept the 1st quarter Budget Revenue and Expenditure report as presented; motion carried by unanimous LRA Board roll call vote.*

AYES: Fosi, Campbell, Jones Cruz, Barber-Martinez, and Chair O’Brien

NAYS: None / ABSENT: None / ABSTAINED: None

7 COMMENTS/REPORTS

A brief report on attendance of a meeting or conference or other notable topics of business shall be made. The Brown Act does not allow for discussion or action by the City Council.

Item 7.1: Staff

- *City Manager Sean Scully announced that the next meeting was scheduled for December 11th.*
- *Director of Parks and Recreation Sue Fitzpatrick announced the Christmas Craft Fair and Parade events.*

Item 7.2: Council/Authority Member

- *Council/Authority Member Cal Campbell announced the Riverbank Cares Turkey Drive and a Historical Society Fundraiser at the Galaxy Theatre.*

- *Vice Mayor/Chair Barber-Martinez Announced the Toy for Tots Drive, the Toy Giveaway event, and reported on her attendance of the Disaster Council meeting.*

Item 7.3: Mayor/Chair

Mayor/Chair O'Brien: 1) Commented on looking into the housing shortage and consideration of a new policy and procedure of agriculture land mitigation by the Local Agency Formation Commission (LAFCO.), and 2) the need to address the City's unfunded liabilities; specifically the Public Employees Retirement System.

8. CLOSED SESSION

The public will have a limit of 5 minutes to comment on Closed Session item(s) as set forth on the agenda prior to the City Council/LRA Board recessing into Closed Session.

Item 8.1: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8
Property: 062-031-005, 062-031-006, 062-031-007
Agency Negotiator: Sean Scully, City Manager
Property Negotiator: Aemetis, Inc.

Item 8.2: CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code § 54957.6
Agency representative: Sean Scully, City Manager
Employee organizations: Mid-Management Bargaining Unit

Item 8.3: CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Government Code § 54956.9: (2) potential case

MAYOR/CHAIR O'BRIEN ANNOUNCED THE CLOSED SESSION ITEMS AND OPENED THE ITEMS FOR PUBLIC COMMENT; NO ONE SPOKE. THE MEETINGS WERE RECESSED AND CITY COUNCIL WENT INTO CLOSED SESSION AT 8:32 P.M.

9. REPORT FROM CLOSED SESSION

MAYOR/CHAIR O'BRIEN RECONVENED THE MEETINGS AT 8:41 P.M.

Item 9.1: Report from Closed Session on Item 8.1: CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Mayor O'Brien reported that direction was provided to staff.

Item 9.2: Report from Closed Session on Item 8.2: **CONFERENCE WITH LABOR NEGOTIATORS** – City Manager and Mid-Management Bargaining unit

Mayor O'Brien reported that direction was provided to staff.

Item 9.3: Report from Closed Session on Item 8.3: **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:** (2) potential case

Mayor O'Brien reported that direction was provided to staff.

ADJOURNMENT

There being no further business, Mayor/Chair O'Brien adjourned the meetings at 8:42 p.m.

ATTEST: *(Adopted 01/08/2019)*

APPROVED:

Annabelle H. Aguilar, CMC
City Clerk / LRA Recorder

Richard D. O'Brien
Mayor / Chair

Attachment: LRA Item 6.4 Budget Report

	<u>2018-19</u> <u>Budget</u>	<u>First</u> <u>Quarter</u> <u>Jul-Sept</u>	<u>Year to</u> <u>Date</u>	<u>2018-19</u> <u>Balance</u>
Fund 197				
Rents	1,200,000	286,254	286,254	913,746
Sale of Personal Property	20,000		0	20,000
DOD Caretaker Revenue	100,800		0	100,800
Utility Revenue from Tenants	280,000	7,799	7,799	272,201
Miscellaneous Revenue	20,000	1,794	1,794	18,206
Total Revenue	1,620,800	295,847	295,847	1,324,953
Salaries	14,000	1,597	1,597	12,403
Fringe	6,900	1,183	1,183	5,717
Administrative Expenses				
Travel	500		0	500
Equipment			0	
Office Supplies/Legal Ads	2,500	39	39	2,461
Phones	460	85	85	375
Copier	100	123	123	-23
Postage	50		0	50
Janitorial	135	77	77	58
Marketing/Branding	5,000		0	5,000
Professional Services				0
Legal - General Municipal	50,000	7,404	7,404	42,596
Legal - Conveyance	30,000		0	30,000
Other Services	17,500		0	17,500
Insurance Premiums	100,000		0	100,000
Facility Operations & Maintenance				
Well maintenance	550	2,747	2,747	-2,197
Permits	2,000		0	2,000
Water Testing	3,150	721	721	2,429
Electrical PM	73,500	3,205	3,205	70,295
Fire Suppression Maintenance	7,350	1,745	1,745	5,605
Landscaping	9,480	1,580	1,580	7,900
Propane	3,200	866	866	2,334
Repairs	90,000	4,742	4,742	85,258
Fire Assessment Fees	200		0	200
Common Area Costs (electric, water, garbage)	350,000	57,589	57,589	292,411
Infrastructure Improvements	25,000		0	25,000
Tenant Improvements	10,000		0	10,000
Facility Mgmt/Security Services Contracts				
Security	200,000	32,595	32,595	167,405
Facility Management	500,000	80,617	80,617	419,383
Total Expenditures	1,501,575	196,915	196,915	
Net Revenues Less Expenditures	119,225	98,932	98,932	

	<u>2017-18</u> <u>Budget</u>	<u>First Half Jan-</u> <u>Jun</u>	<u>Second Half</u> <u>Jul-Dec</u>
<u>Fund 198</u>			
<i>OEA Grants</i>	<u>144,026</u>	<u>144,026</u>	
Total Revenue	144,026	144,026	-
<i>Salaries</i>	<u>44,849</u>	<u>44,849</u>	<u>17,969</u>
<i>Fringe</i>	<u>30,035</u>	<u>30,035</u>	<u>13,308</u>
<i>Administrative Expenses</i>			
<i>Travel</i>			
<i>Office Supplies/Legal Ads</i>	<u>1,032</u>	<u>1,032</u>	<u>869</u>
<i>Phones</i>			<u>593</u>
<i>Copier</i>			<u>859</u>
<i>Postage</i>	<u>26</u>	<u>26</u>	
<i>Janitorial</i>			<u>542</u>
<i>Marketing/Branding</i>			
<i>Professional Services</i>			
<i>Legal</i>	<u>68,084</u>	<u>68,084</u>	
<i>Other Services</i>			
Total Expenditures	144,026	144,026	34,140
Net Revenues Less Expenditures	0	0	0

FUND 199

ESCA #2

Available Fund Balance, June 30, 2018 \$ 3,776,217

	Quarter 1 9/30/2018	Quarter 2 12/31/2018	Quarter 3 3/31/2019	Quarter 4 6/30/2019
REVENUES (FY 2018-2019)				
Cash Request #10	\$ 1,353,613			
EXPENSES (FY 2018-2019)				
WESTON Contract	\$ 676,713			
Contingency				
SIES Contract	\$ 34,249			
Admin	\$ 1,181			
T & D (reimbursement basis only)	\$ 237,947			

ESCA #2 To Date

Total Revenue	\$	37,666,443	(2016-current)
Total Expenses	\$	33,776,522	(2016-current)
BALANCE	\$	3,889,921	

Capital Improvements Related to ESCA #2 (funded w/reserved cash on hand)

Roof & Siding Project To Date	\$	11,810	Contractors/Equipment
	\$	11,810	100% complete



RIVERBANK CITY COUNCIL AGENDA ITEM NO. 5.1

SECTION 5: PUBLIC HEARINGS

Meeting Date:	January 8, 2019
Subject:	First Reading by Title Only and Introduction of a Proposed Ordinance Approving a Rezone of 1.1± Acres to Planned Development Located at Seventh and Sierra Streets (APN 312-015-023) a Project Known as Riverbank Commons
From:	Sean Scully, City Manager
Submitted by:	Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that the City Council conduct the public hearing for the first reading of the proposed ordinance to consider its approval; if approved, the second reading of the ordinance by title only will be scheduled for the next regular City Council meeting on January 22, 2019, for consideration of its adoption.

The Planned Development Rezone 01-2017, Architecture & Site Plan Review 02-2017, Tentative Subdivision Map 01-2017 (Dept. File # 17-0015) – Edmond Shamass, applicant; Edward Touma, owner – a fourteen lot gated community including Lot A which consists of streets, parking area, utilities, landscaping, and a small park, which was considered by the Planning Commission, and by a 5-0 vote on October 16, 2018, approved the Tentative Map and Architecture & Site Plan Review for the Project and recommended City Council approval of the proposed ordinance.

INTRODUCTION

The Planning Commission, with a 5-0 vote on October 16, 2018 approved the Tentative Map and Architecture & Site Plan Review for the Project. They also recommended City Council approval of draft Ordinance No. 2018-XXX for the Rezone of 1.1± acres to a new Planned Development located at Seventh and Sierra Streets (APN 132-015-023), based on the analysis and findings presented below for the Riverbank Commons development. City Council heard the first reading of draft Ordinance No. 2018-XXX in public hearing at their regular meeting of November 13, 2018 and approved the Rezone to PD with a vote of 5-0. After the second reading of the ordinance was scheduled, staff unfortunately found

a public notice mailing irregularity, and on December 11, 2018, City Council voted to table consideration for adoption of the ordinance to allow for the noticing of the project to be conducted and the ordinance to be reintroduced for consideration. To ensure the project is in strict conformance with State public noticing laws, staff has re-noticed the item and is bringing it back before the Council for another first reading.

SUMMARY

The proposed project consists of a Tentative Subdivision Map ("TM"), Architecture & Site Plan Review ("ASPR"), and a Planned Development Rezone ("Rezone") to subdivide approximately 1.1± acres into thirteen (13) single-family residential lots and Lot A with a net density of 19.1 dwelling units per acre ("du/acre"). The project site currently has a General Plan Land Use designation of Higher Density Residential (HDR 16+ du/acre) and is currently zoned Planned Development ("PD") 27. The current PD zoning was approved in 2008 and contains conditions of approval which the developer would like to remove or modify as they are too costly to implement in today's market.

BACKGROUND

The subject project is located in central Riverbank and bounded by an alley and residential parcels to the North, Seventh Street and residential parcels to the East, railroad tracks to the South, and a multifamily housing complex to the West. As an infill project, the product type will provide a good transition between the multifamily housing complex to the West and the single family neighborhood on Seventh Street.

The neighborhood is an established residential neighborhood that was annexed to Riverbank in 1968 by the South Riverbank Annexation. In 1990, the City Council adopted Planned Development 27 that established a development plan for the property that illustrated 26 attached dwelling units on the 1.1 acre site. Thus, the site has been designated for higher density since its annexation.

The project site is vacant with the bulk of it set 150 feet back from Seventh Street. Previous approvals include a tentative map for the original 26 attached dwelling units, a tentative map for 22 detached senior-restricted units, and a tentative map for 19 attached condominiums. The senior units were found to be inappropriate for the site given accessibility issues with the proposed two story units and the lack of amenities necessary for a senior development. The condominium map is still valid until March 24, 2019, but as mentioned previously, there are expensive conditions of approval that kept this project from being built such as alley improvements that were required for the entire alley instead of just the project frontage.

ANALYSIS

A. Site Design

The design of the project as proposed is a small lot detached single family residential subdivision as can be seen from its Tentative Map (Attachment 2). The proposed lot sizes drop substantially below the Riverbank Municipal Code ("RMC") R-3 standard of 6,000 square feet ("sf") and the current condominium lots do not work for the product type proposed; therefore, the developer has applied for a rezone to a PD which will accommodate the proposed 2,750 to 1,995 square foot lots with their reduced setbacks. As a gated community, the single street and roundabout will be privately maintained and all utilities will be installed within it, including storm water retention and percolation beneath it, eliminating the need for the standard utility easements in front yards. The proposal is to have access from Seventh Street and an emergency vehicle access ("EVA") for Fire only to the alley. These facilities plus the park and landscape planters are all contained in Lot A.

B. Architecture / Residential Design Guidelines

The architecture of the proposed project (Attachment 3) includes modern and craftsman type designs. Each two-story home features a two-car garage and decorative entry way. There are four (4) different elevations offered. Each elevation blends a variety of earth tones. In addition, the proposed project will feature colored roads and sidewalks. All colors proposed in the project are various earth tones that blend well together (Attachment 4). Additional architectural details include stucco foam trim, concrete roof tiles, decorative entry doors, and upgraded garage doors.

The proposed project will also feature a seven foot CMU wall along the southern property line which borders BNSF right-of-way. The remainder of the proposed project site will feature six foot good neighbor wooden fencing. The Planning Commission with a vote of 5-0 approved the Architecture and Site Plan Review (Attachment 5).

C. Transportation and Circulation

The proposed project features one (1) 22-foot entrance and exit point on Seventh Street. Emergency Vehicle Access ("EVA") will be accomplished through the entry on Seventh Street and the exit at the Sixth-Seventh Street Alley. "No parking" areas will be required at various locations around the project site to ensure EVA access is retained at all times. The developer will also be required to install a Knox Box to allow emergency vehicles to bypass the gated access features. Each home will feature a two-car garage but no driveway parking. Additional parking of one designated space per home is featured at various locations within the site.

The proposed project site will include improvements to the project's frontage along the Sixth-Seventh Street Alley instead of the entire alley. In addition, ADA access is required throughout the site and onto Seventh Street.

D. General Plan Consistency

The existing General Plan designation for this project is Higher Density Residential (HDR) which allows 16+ dwelling units per net acre. The project proposes thirteen (13) dwelling units on .68 net acres for a total of 19.1 dwelling units per net acre (“net” means excluding Lot A). Thus, the project’s density is consistent with the HDR designation of the General Plan.

General Plan Consistency Findings

In order to approve the proposed Project, the Planning Commission had to find that it is consistent with the Riverbank General Plan. Below is a discussion of General Plan Policies with which the proposed project is consistent or inconsistent:

1. Policy LAND-3.3

The City will encourage “compact development” which places origination and destination points closer together (residence, stores, schools, places of work, etc.), allowing for alternatives to vehicular travel. *The proposed project is a compact development located in close proximity to Downtown Riverbank for commercial opportunities.*

2. Policy LAND-3.4

Gated projects are only permissible only if connectivity with surrounding areas will not be significantly impaired. The City maintains the sole authority to approve a project that includes gates exclusivity in cases where a property is located where through connections would not be possible to other existing development or planned future developed areas. The City will not allow gates in unless fire access can be guaranteed according to Stanislaus Consolidated Fire Protection District. This exception to the general preference for connectivity and access can be made where a project consists solely of unique and locally desired land uses, such as senior housing. *The proposed project will feature a Knox Box which will be accessible to all emergency vehicles and emergency personnel. Further, the location close to downtown may attract active retired couples who tend to have less vehicles per household than the average family and prefer less yard to maintain. Finally, the developmental constraints of the site, including an alley to the north, a cul-de-sac to the west, train tracks to the south, and Seventh Street to the east are such that the gated project is consistent with this policy. This subdivision is unable to be linked to any adjacent developments.*

3. Policy DESIGN-3.6

1. The City will evaluate proposed projects, plans, and subdivision requests involving limited or controlled access according to the following criteria and consistency with other relevant General Plan policy. Access controls may be approved by the City if the following conditions are met:
 - The controlled access project provides a community and/or internal project benefit or satisfies a specific community need, such as, but not limited to: enhancing community safety and security; improving existing or projected traffic impacts; promoting community cooperation or identify; or, significantly enhancing the quality of life. *The project offers small-lot single family housing, which satisfies a need within the community. Small-lot single family housing tends to be more affordable than traditional larger lot single family housing. This will provide a more affordable option for Riverbank's residents to purchase their first home or to downsize after retirement.*
 - The limited success project includes alternative means of reducing traffic impacts as described in the Street Design Manual, and measures such as gateways, bollards, median-chokers, curb pop-outs, channelization of intersections, left/right turn only directional signs, one-way streets, and parking restrictions. *Parking restrictions will be in place as the site must always achieve consistency with the California Fire Code. The site has been designed to allow for sufficient parking for residents in a manner which maintains a consistent fire lane for emergency vehicles.*
 - The limited or controlled access project does not significantly displace existing or projected future traffic or parking impacts to adjacent areas. *The project will not displace existing or the project's future traffic. All residents will park in their garages and on designated areas throughout the private street section.*
 - Public access is not denied to open spaces, river, parks, trails, commercial areas, transit stops, major streets, schools, or public facilities. *The project is not consistent with this policy as the open space area (tot lot and BBQ area) is not open for public use but is an amenity to compensate for the smaller lots.*
 - The street system, gated entry, and premises identification meet all criteria established in State regulations and City ordinances, policies, and design manuals. *This policy has been added as a condition of approval for the project.*
 - Street access to gated projects has been provided for police, fire, and other emergency vehicles by means that are acceptable to the providers of those services. *The project is consistent with this policy as project plans have been reviewed by the Stanislaus Consolidated Fire District and the gated entry will*

feature a Knox Box system for EVA access at all times. Further, a designated fire lane will be maintained throughout the site.

- Access will be provided for postal service, trash pick-up, and school buses. Pursuant to the Municipal Code, the City will not collect trash on private property. *This policy has been addressed in the conditions of approval.*
- The City shall be granted general utility easements and utility access easements on private streets. *This policy has been added as a condition of approval.*
- The location of the gates shall provide adequate stacking areas to accommodate traffic to the project. Stacking shall not adversely impact circulation on any public street. *The current site plan shows room for one (1) car to stack on the entry way.*
- Walls or other enclosures attached to gates shall use a combination of setbacks, landscaping, civic enhancements and human scale articulation and/or other design features. The enclosures will be governed by relevant sections of the municipal code related to sight distances. *This policy will be addressed through the implementation of the conditions of approval for the project.*

4. Policy DESIGN-4.2

Approved projects, plans, and subdivisions shall provide diversity among dwelling units in the use of color, building materials, floor plan layouts, square footages, and roof lines. Approved projects, plans, and subdivision requests shall maintain continuity of a few overall urban design features to provide context between individual units and the neighborhood. *The project features a variety of floor plans, elevations, and color schemes and is consistent with this policy.*

5. Policy DESIGN-4.3

The City will encourage individually owned garages to be clustered or placed beneath units with common driveway access to maximize efficient use of the overall site area. *Each single family residence will have an individual two-car garage making the project consistent with this policy.*

6. Policy DESIGN-4.4

The City will allow for small front-yard setbacks in single-family residential districts to permit greater design flexibility and ensure an inviting human scale. *The project features small front setbacks as discussed in the development standards shown in Section E.*

7. Policy DESIGN-4.6

The City will allow common ownership of parking, courtyard gardens, recreational facilities, and/or open spaces for cluster, cottage, and attached single family residential housing. *The project will be required to create a Home Owner's Association (HOA), which will allow for common ownership and maintenance of Lot A.*

8. Policy ED-10.1

The City will ensure that the quality and type of housing in the community will be attractive to a wide range of residents. *The project features a number of unique designs that will be a positive addition to the city's housing stock that currently is needed. The Project is expected to attract first-time homebuyers, small families, and active retirees.*

F. Rezone

The developer is requesting relief from Multiple Family Residential (R-3) standards through rezoning the property as another Planned Development ("PD"). The Table below compares the standards of the two districts, nine (9) of which propose smaller minimums or larger maximums than the R-3 zone does (*):

Type of Standard	HDR Zoning Standards	Proposed PD Standards
Lot Size	6,000 sf minimum for 2 units, then 2,000 sf for each unit, not to exceed 20 units per net acre.	1,995 sf minimum per unit *
Lot Width	55/65 feet minimum	35 feet minimum *
Lot Depth	100 feet minimum	50 feet minimum *
Density	16+ units per net acre	19.1 units per net acre
Min. Building Size	Single Family – 900 sf	Single Family – 1408 sf
Height	35 feet maximum	25 feet maximum
Front Setback	15 feet minimum	7 feet minimum *
Garage Setback	20 feet minimum	7 feet minimum (no driveway parking) *
Side Setback	5 feet minimum	3 feet minimum *
Rear Setback	5 feet minimum	5 feet minimum
Lot Coverage	60% maximum	91% Maximum*
Accessory Height	10 feet maximum	N/A
Floor Area Ratio	Single Story – 0.60:1.0	Two Story - 0.90:1.0 *
Local Street Width	64 feet	22 feet minimum *
Sidewalks	Both sides of street	Both sides of street
Onsite Parking	2 covered spaces	2 covered spaces

Pursuant to RMC section 153.162 (E)(3), staff has requested that the developer offer amenities to compensate the neighborhood for deviating from the modified minimum and

maximum standards above. These amenities could include enhanced landscaping, a colored concrete or brick crosswalk, electric charging stations in the garages, upgraded front doors and garage doors, decorative wrought iron fencing in the front, open space furniture, French doors instead of sliders, etc. Other suggestions would be considered at the satisfaction of the Community Development Director. The developer proposes amenities such as enhanced landscaping, decorative wrought iron fencing and gates, colored concrete sidewalks and pavement, colored stamped concrete pavement, upgraded garage doors, and enhanced lighting fixtures and poles.

Per Riverbank Municipal Code section 153.161 (A), no combination of parcels less than one (1) acre in size may be rezoned PD. The parcel proposed for development in this project totals 1.1± acres. Therefore, the project meets this requirement.

Rezone Findings

The Planning Commission recommended approval of the rezone to PD to the City Council with a vote of 5-0 (Attachment 6). To recommend approval, the Commission made the following 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 total development. *The development could be built in stages and exist as independent units capable of creating a good environment. The first units to be built would be closest to Seventh Street and the existing adjacent homes.*
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 a vacant parcel that is a struggle for the owner to keep litter-free. A new subdivision will reduce any blighted conditions on the property as well as add to the diverse housing stock the City has to offer to potential new residents.*
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. *Amenities proposed by the developer and staff for the deviations from R-3 zoning include: covered tot lot and BBQ area, enhanced landscaping, decorative wrought iron fencing and gates, colored concrete sidewalks and pavement, colored stamped concrete pavement, upgraded garage doors, and enhanced lighting fixtures and poles.*
4. The principles incorporated in the proposed master plan identify unique characteristics which could not otherwise be achieved under other zoning districts. *Smaller lots could not be achieved under other zoning districts.*

5. Where a PD rezone is initiated by the City, the previous findings are not required and a master plan is not required. *This PD was not initiated by the City.*

G. Tentative Map

The Tentative Map proposes 13 buildable single family residential lots. The proposed street name will be reviewed by staff and outside agencies such as Fire and 911 to see if it is currently in use. Per RMC section 152.026 (L) all street names shall be approved by City Council. Duplication of existing names within the County will not be allowed unless the streets are obviously in alignment with existing streets and likely to be a continuation of the other street in the future.

Tentative Map Findings

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

1. The proposed map is consistent with applicable general and specific plans. *The proposed map is consistent with the General Plan if the recommended Conditions of Approval are adopted.*
2. The design or improvement of the proposed subdivision is consistent with applicable general and specific plans. *The proposed map is consistent with the General Plan if the recommended Conditions of Approval are adopted as they relate to connectivity, sidewalks, and the provision of amenities.*
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 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.*

H. Parks

Pursuant to RMC Section 11-3-12(c), the Project has an obligation to dedicate park land. The developer has set aside 0.05 acres of Lot A for a small private park. The proposed park will offer a BBQ area and a covered tot lot, which will be offered as an amenity for the PD zoning. Park-in-lieu calculations show the obligation of parkland dedication for the project is 0.165 acre. The Planning Commission with a 5-0 vote approved the Tentative Map (Attachment 7).

ENVIRONMENTAL DETERMINATION

As stated earlier, staff as determined that this project is exempt from further CEQA Analysis as an exemption is permitted. The proposed project will not have a significant effect on the environment and is categorically exempt under Article 19 Section 15332 (a-e) Class 32, In-Fill Development Projects. The Project is consistent with the General Plan and Zoning Code, it is less than 5 acres and within city limits, it has no value as habitat for endangered, rare, or threatened species, its construction would not result in significant effects to traffic, noise, air quality, or water quality, and the site can be adequately served by all required utilities and public services.

PUBLIC NOTICE

On December 13, 2018, public notices for the City Council hearing were mailed to interested parties and property owners within 300 feet of the project location. The City Council hearing notice was published in the Riverbank News on December 26, 2018. It was also posted at City Hall North, South, the post office, and sent to the library on December 13, 2018. A large Notice of Development Permit sign was posted and remains at the project site since October 3, 2018.

PLANNING COMMISSION

On October 16, 2018, the Planning Commission held a duly noticed public hearing to consider the proposed Project. Five (5) Planning Commissioners were present at this meeting, including Vice Chairman Ball who presided in Chair Dinan's absence and Commissioner Link, the Planning Commission's alternate member.

During the public comment period, Edmond Shamass, the Developer spoke in favor of his project, offering to answer any questions the Planning Commission might have for him. Five members of the public, all neighbors of the site, also commented on the project, explaining their concern with an existing lack of street parking on Seventh Street. They did not feel three parking spaces for each house within the new subdivision (two garage spaces and one assigned street space) were enough to keep new residents from parking on Seventh Street, which is already crowded with their cars and the cars of their guests.

In addition to the speakers, Kathy Hedman submitted a letter to the Planning Commission dated October 15, 2018 on behalf of her mother Barbara Trager (Attachment 8) discussing Mrs. Trager's concerns with too little parking, an increase in noise, and a lack of privacy. Mrs. Trager requested a block wall between her home and the new subdivision for noise attenuation but staff believes a wooden fence is more appropriate. Mrs. Trager has railroad tracks to the south of her home and the concern is that a wall on her north side (the subdivision side) would deflect train noise to the north side of her home. She would then have train noise on both sides of her home. The closest new home to Ms. Trager's existing home would be approximately thirty-four feet away. Most homes within the City are ten feet apart (2 five-foot setbacks combined).

Vice Chair Ball made motion to approve the Architecture & Site Plan Review and Tentative Map resolutions and recommend to the City Council the adoption of the draft Rezone Ordinance for the development of a 1.1 acre residential subdivision. Commissioner Hughes seconded the motion and Resolutions Nos. 2018-007/-008/-009 (Attachments 6, 7, and 8) were approved with a 5-0 vote.

FISCAL IMPACT

The Project is a clean-up of an older previously approved subdivision map. The fiscal impacts associated with providing municipal services to new residential projects will be partially off-set by the funds generated through CFD 2016-01. In light of the obligation to participate in the above mentioned Community Facilities District, the Project is unlikely to negatively impact the City's finances.

STRATEGIC GOALS

The City's Strategic Planning Session is a plan and set of goals that the City will work towards for the next three years. This project works toward the goal of maintaining and improving the City infrastructure systems.

ATTACHMENTS

1. Draft City Council Ordinance No. 2018-XXX Rezone
2. Tentative Subdivision Map 01-2017, date stamped July 31, 2018
3. Site Plans, Elevations, and Floor Plans, date stamped July 31, 2018
4. Riverbank Commons Colors and Materials
5. Planning Commission Resolution 2018-008 Architecture & Site Plan Review
6. Planning Commission Resolution 2018-009 Rezone to PD
7. Planning Commission Resolution 2018-007 Tentative Map
8. Kathy Hedman/Barbara Trager letter dated October 15, 2018

CITY OF RIVERBANK

ORDINANCE NO. 2019-XXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA,
APPROVING A REZONE OF 1.1± ACRES TO PLANNED DEVELOPMENT, LOCATED AT
SEVENTH AND SIERRA STREETS (APN 132-015-023) – A PROJECT KNOWN AS
RIVERBANK COMMONS**

WHEREAS, an application has been received from Edmund Shamass, with a proposal to subdivide approximately 1.1± acres into thirteen (13) single family lots, which allows for a net density of 16+ dwelling units per acre; and

WHEREAS, the City of Riverbank Planning Commission conducted a Public Hearing on Tuesday, October 16, 2018 to consider the proposed Zoning Ordinance Amendment and with a vote of 5-0 recommended its approval to the City Council; and

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

1. An application has been received from Edmund Shamass with a proposal to subdivide approximately 1.1± acres into thirteen (13) single-family residential lots, and Lot A, which allows for a net density of 16+ dwelling units per acre; and
2. The project site is currently zoned Planned Development (PD) with a General Plan Land Use Designation of High Density Residential (HDR); and
3. The applicant is proposing to rezone the subject property to a new Planned Development (PD); and
4. Notice of the public hearing on the proposed Zoning Ordinance Amendment was published in the *Riverbank News*, a newspaper of general circulation, on December 26, 2018; and,
5. Notices of the public hearings on the proposed Zoning Ordinance Amendment were mailed to all property owners within 300 feet of the property, according to the most recent assessor's roll on December 13, 2018; and
6. The City finds that Pursuant to the California Environmental Quality Act, the proposed project will not have a significant effect on the environment.

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

Section 1: The City Council of the City of Riverbank approves Rezoning 1.1± acres to the Planned Development zone district, located at APN 132-015-023.

Section 2: 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, 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 3: This Ordinance shall become effective thirty (30) days from and after its final passage (01/12/2019), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on November 13, 2018. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the ____ day of _____, 2019; motioned by Councilmember _____, seconded by Councilmember _____; and moved said ordinance by a City Council roll call vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

Annabelle H. Aguilar, CMC
City Clerk

APPROVED:

Richard D. O'Brien
Mayor

APPROVED AS TO FORM:

Tom P. Hallinan, City Attorney

- NOTE:**
- 1) NO TREES TO BE REMOVED.
 - 2) NO STRUCTURES TO BE REMOVED.
 - 3) SOIL TYPE: MdA MADERA SANDY LOAM
0-2% SLOPES
HYDROLOGIC SOIL GROUP: D
 - 4) DEPTH TO GROUNDWATER: 71 FEET



VICINITY
NOT TO SCALE

A.P.N. 132-015-023
CONTACT: EDMOND SHAMASS
615 13TH STREET
MODESTO, CA 95354
(209) 345-8316
eshamass@gmail.com

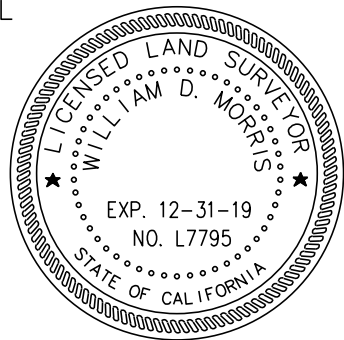
OWNER/
APPLICANT: EDMOND SHAMASS
615 13TH STREET
MODESTO, CA 95354

SITE ADDRESS: 7TH STREET (x SIERRA STREET)
RIVERBANK, CA 95367

ZONING: R-2 DUPLEX RESIDENTIAL
GENERAL PLAN: HDR HIGHER DENSITY RESIDENTIAL

TOTAL AREA: 1.17 AC.
WATER: CITY OF RIVERBANK
SANITARY SEWER: CITY OF RIVERBANK

PREPARED BY: MORRIS ENGINEERING & SURVEYING, INC.
334 S. YOSEMITE AVENUE, SUITE D
OAKDALE, CA 95361
(209) 845-9175

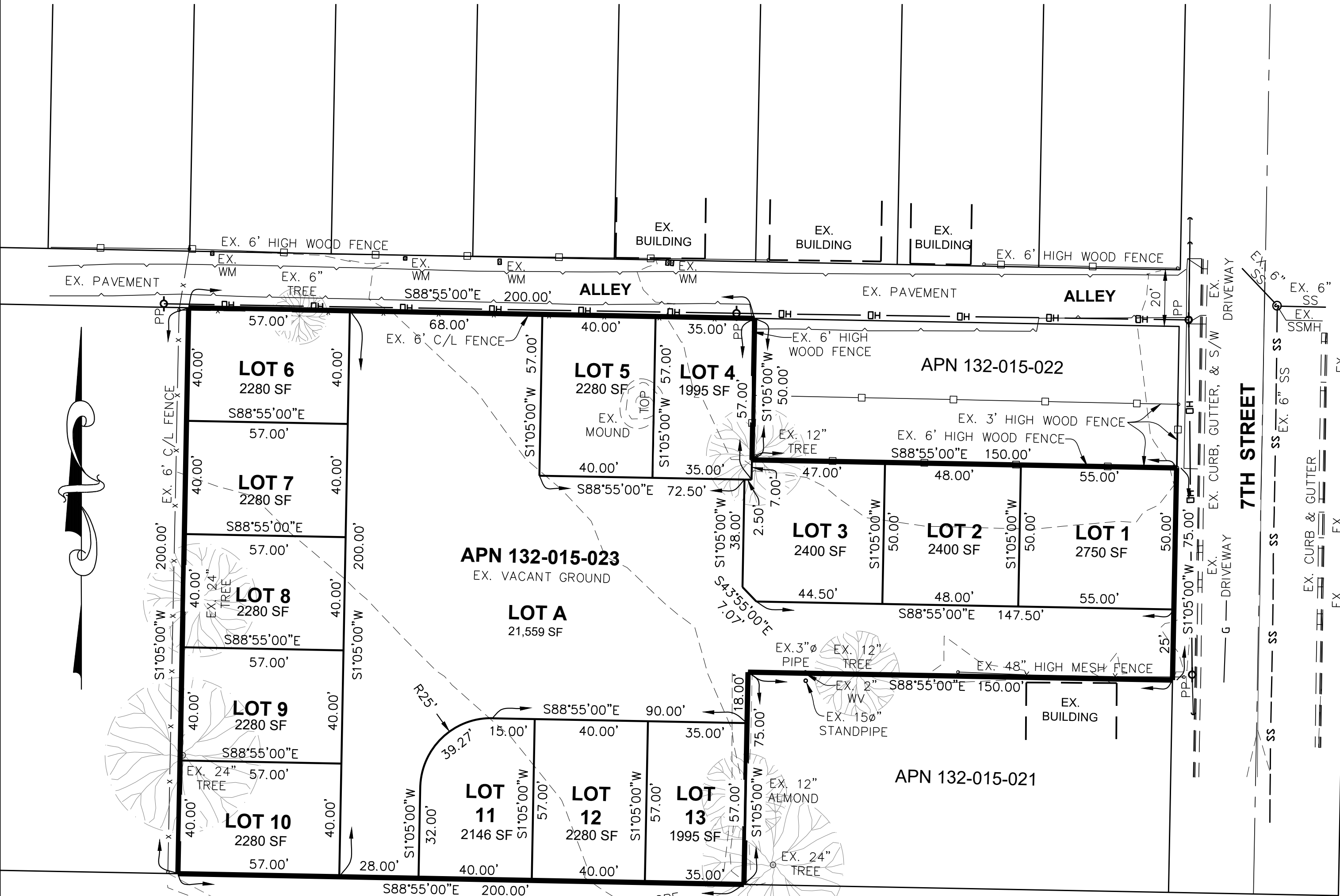


**TENTATIVE
SUBDIVISION MAP**

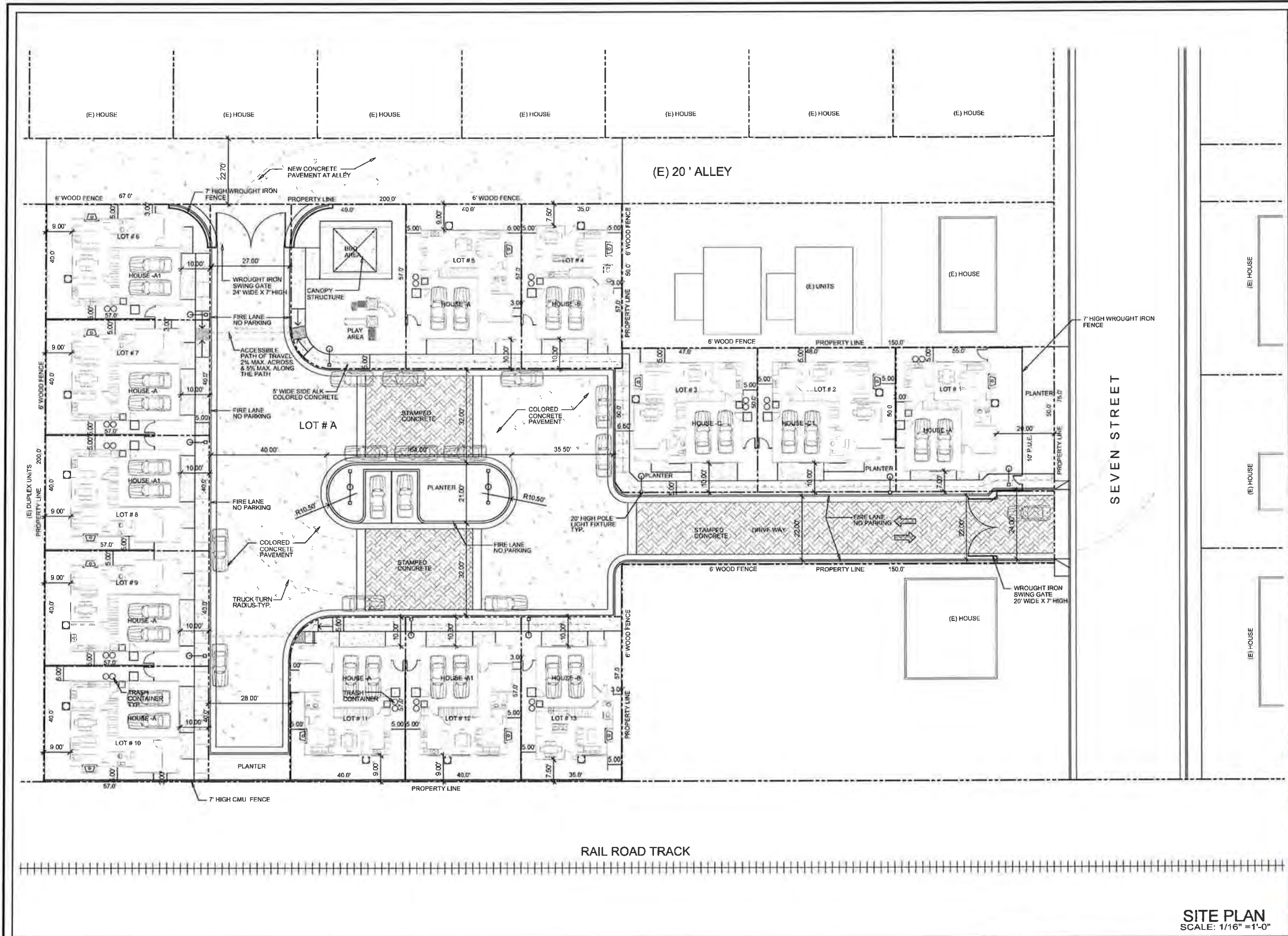
BEING ALL OF LOT 2 AND A PORTION
OF LOT 3 AS SHOWN ON THE EASTERN
ADDITION TO THE TOWN OF RIVERBANK
FILED IN BOOK 7 OF MAPS AT PAGE 30,
STANISLAUS COUNTY RECORDS, SITUATE IN
THE NORTHEAST QUARTER OF SECTION 25,
T.2S., R.9E., M.D.M., CITY OF RIVERBANK,
STANISLAUS COUNTY, CALIFORNIA
SCALE: 1"=30' JUNE 2018

MORRIS
ENGINEERING & SURVEYING, INC.

334 S. YOSEMITE AVENUE, SUITE D
OAKDALE, CA 95361
(209) 845-9175 x (209) 845-9177 (FAX)



BURLINGTON NORTHERN & SANTA FE R.R.



PROJECT DATA

A.P.N. 132-15-23

PROPOSED USE: SINGLE FAMILY RESIDENTIAL

OCCUPANCY: R3-U

TYPE OF CONSTRUCTION: V-B (FIRE SPRINKLERED)

ZONING: PLANNED DEVELOPMENT

TOTAL PROJECT SITE AREA 51,250 S.F.

LOT #1	2,750 S.F.
LOT #2	2,400 S.F.
LOT #3	2,400 S.F.
LOT #4	1,995 S.F.
LOT #5	2,280 S.F.
LOT #6	2,280 S.F.
LOT #7	2,280 S.F.
LOT #8	2,280 S.F.
LOT #9	2,280 S.F.
LOT #10	2,280 S.F.
LOT #11	2,146 S.F.
LOT #12	2,280 S.F.
LOT #13	1,995 S.F.
LOT-A	21,559 S.F.

HOUSE -A

TOTAL MAIN HOUSE 1,678 S.F.

2- CAR GARAGE 427 S.F.

HOUSE -B

TOTAL MAIN HOUSE 1,408 S.F.

2- CAR GARAGE 427 S.F.

HOUSE -C

TOTAL MAIN HOUSE 1,968 S.F.

2- CAR GARAGE 427 S.F.

MATRIX OF R-1 REQUIREMENT VS. PD

REGULATION	R-1 ZONING	PD ZONE
LOT SIZE (MINIMUM)	6,000 S.F.	1,995 S.F.
LOT WIDTH (MINIMUM)	60 FT.	35 FT.
FRONT SETBACK (GARAGE)	20 FT. MIN.	7 FT.
SIDE SETBACK (MINIMUM)	5 FT.	3 FT.

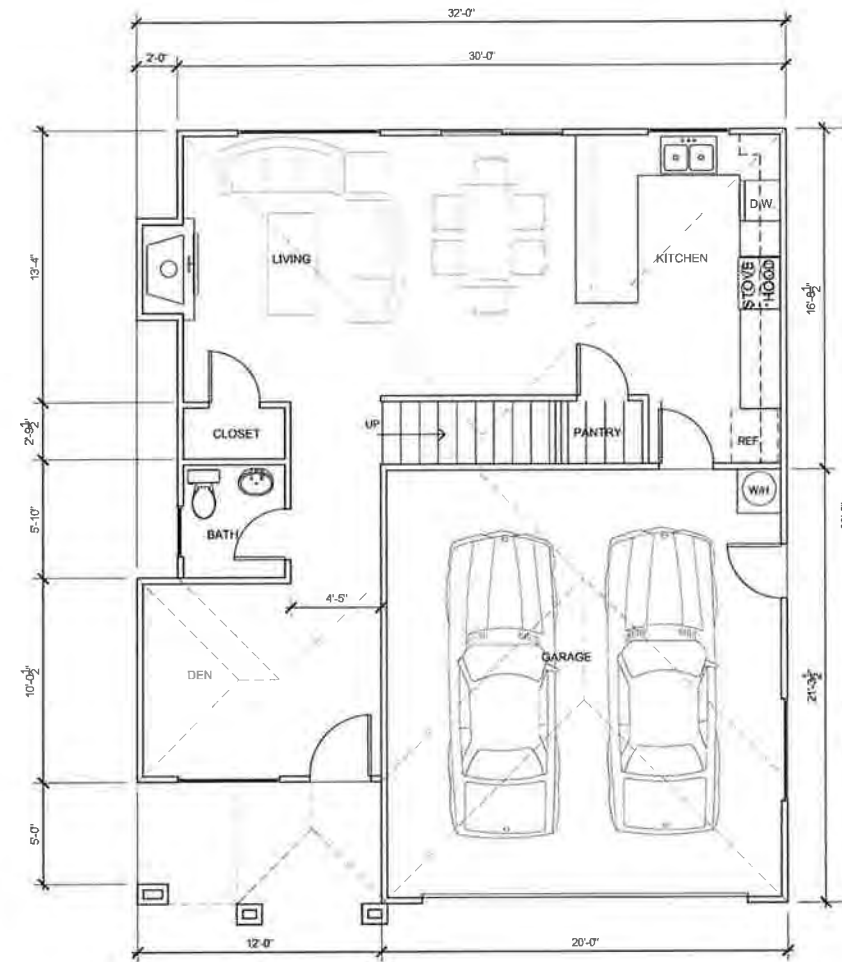
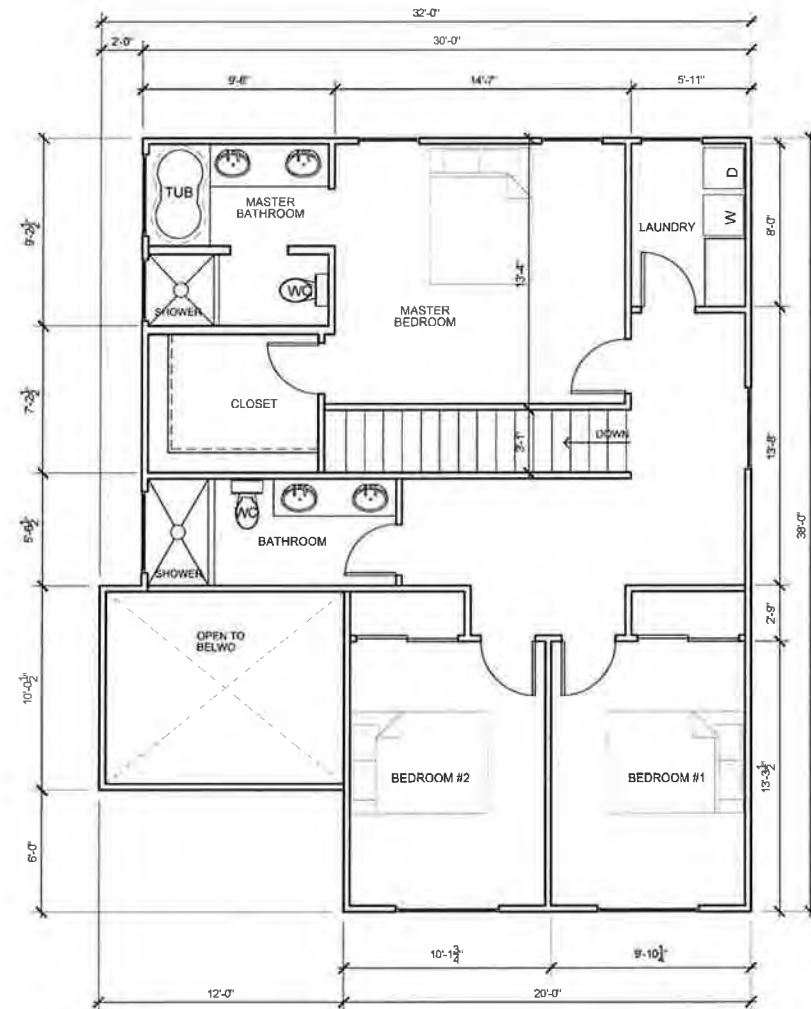
PD AMENITIES

- ☐ GATED COMMUNITY
- ☐ ENHANCED LANDSCAPING
- ☐ COLORED CONCRETE SIDE WALK
- ☐ COLORED CONCRETE PAVEMENT
- ☐ COLORED STAMPED CONCRETE PAVEMENT
- ☐ UPGRADED GARAGE DOORS
- ☐ COMMON BBQ AREA WITH COVERED CANOPY
- ☐ ENHANCED LIGHTING FIXTURE AND POLE

VICINITY PLAN

PROJECT SITE

SITE PLAN
SCALE: 1/16" = 1'-0"



MAIN HOUSE AREA:	
FIRST FLOOR	673 S.F.
SECOND FLOOR	1005 S.F.
TOTAL MAIN HOUSE	1,678 S.F.
2-CAR GARAGE	427 S.F.

PROPOSED SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"

PROPOSED FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367



2301 Coffee Road #B Modesto, CA 95355
Phone: 209-408-0674 edmondj@edmondjarchitect.com

HOUSE -A

1/3

JUNE 13, 2018
236-17



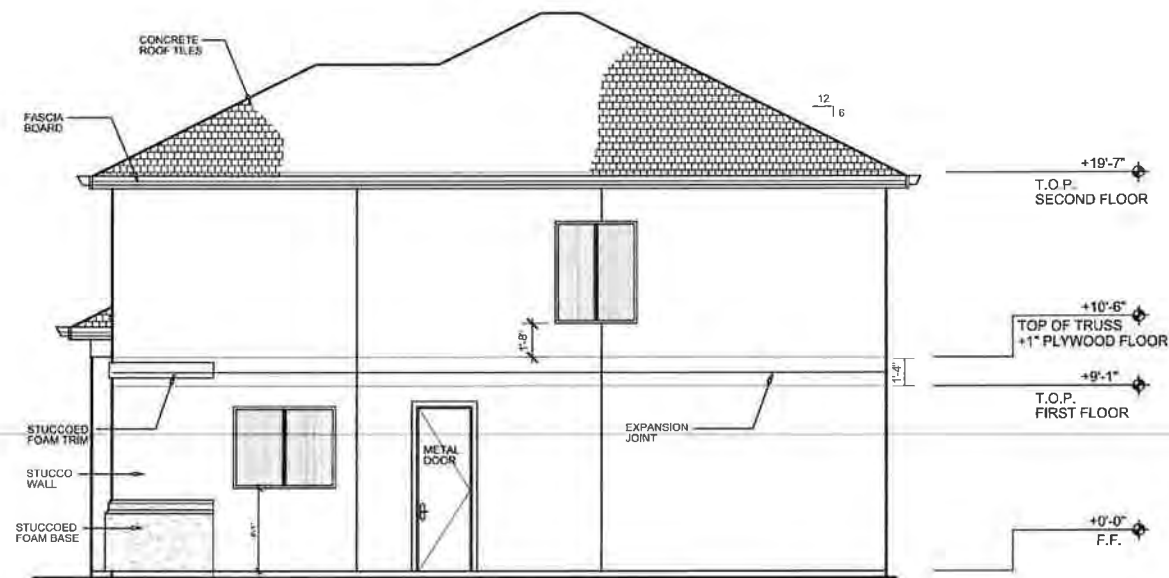
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



BACK ELEVATION

SCALE: 1/4" = 1'-0"



RIGHT ELEVATION

SCALE: 1/4" = 1'-0"



LEFT ELEVATION

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367



2301 Coffee Road #B Modesto, CA 95355
Phone: 209-406-0674 • edmondj@edjarchitect.com

HOUSE -A **2/3**

JUNE 13, 2018
236-17



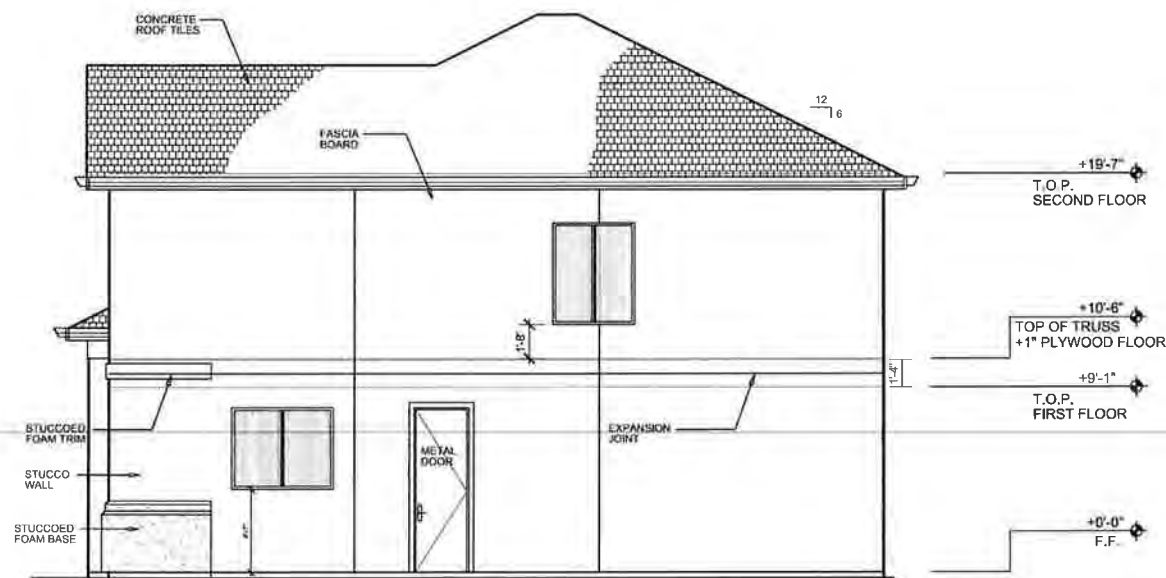
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



BACK ELEVATION

SCALE: 1/4" = 1'-0"



RIGHT ELEVATION

SCALE: 1/4" = 1'-0"



LEFT ELEVATION

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

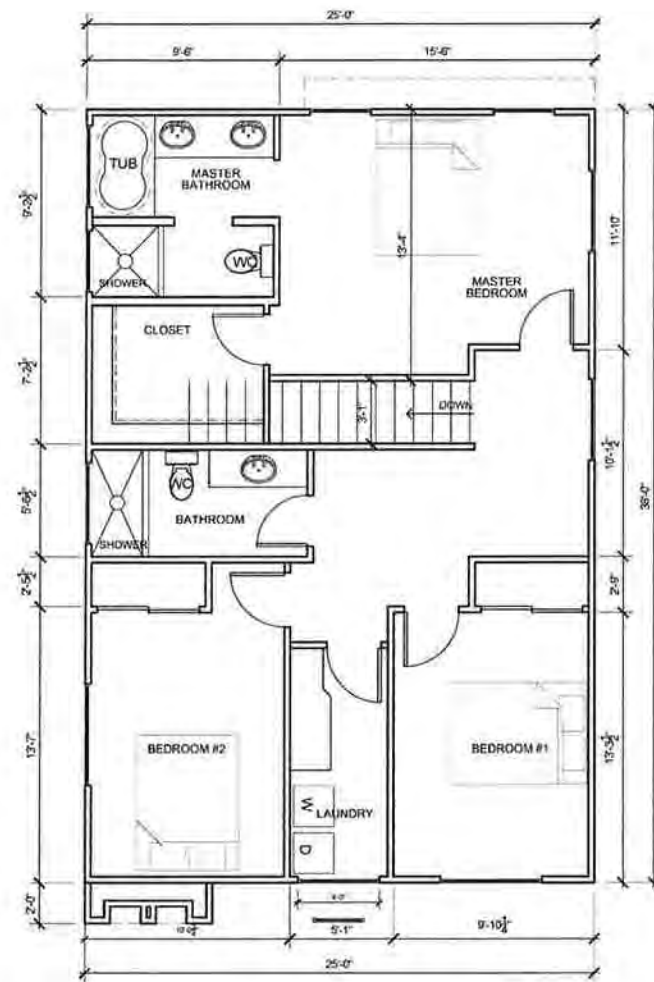
RIVERBANK, CA 95367



2301 Coffee Road #B Modesto, CA 95355
Phone: 209-408-0674 edmond@edjacobs.com

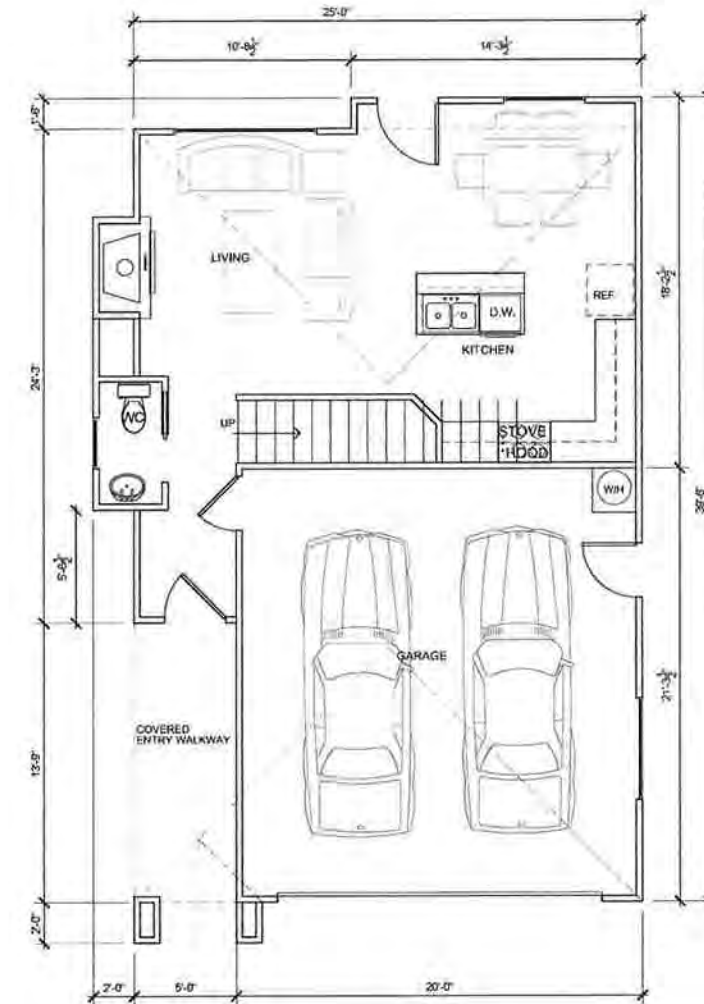
HOUSE -A1 3/3

JUNE 13, 2018
236-17



PROPOSED SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"



PROPOSED FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"

MAIN HOUSE AREA:	
FIRST FLOOR	458 S.F.
SECOND FLOOR	950 S.F.
TOTAL MAIN HOUSE	1,408 S.F.
2-CAR GARAGE	427 S.F.

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367



HOUSE-B

1/2

JUNE 13, 2018
236-17



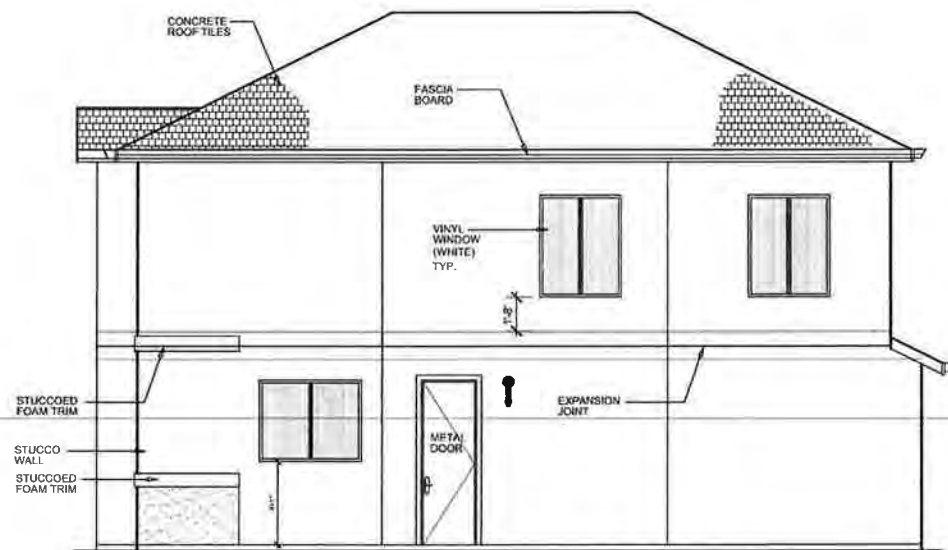
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



BACK ELEVATION

SCALE: 1/4" = 1'-0"



RIGHT ELEVATION

SCALE: 1/4" = 1'-0"



LEFT ELEVATION

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

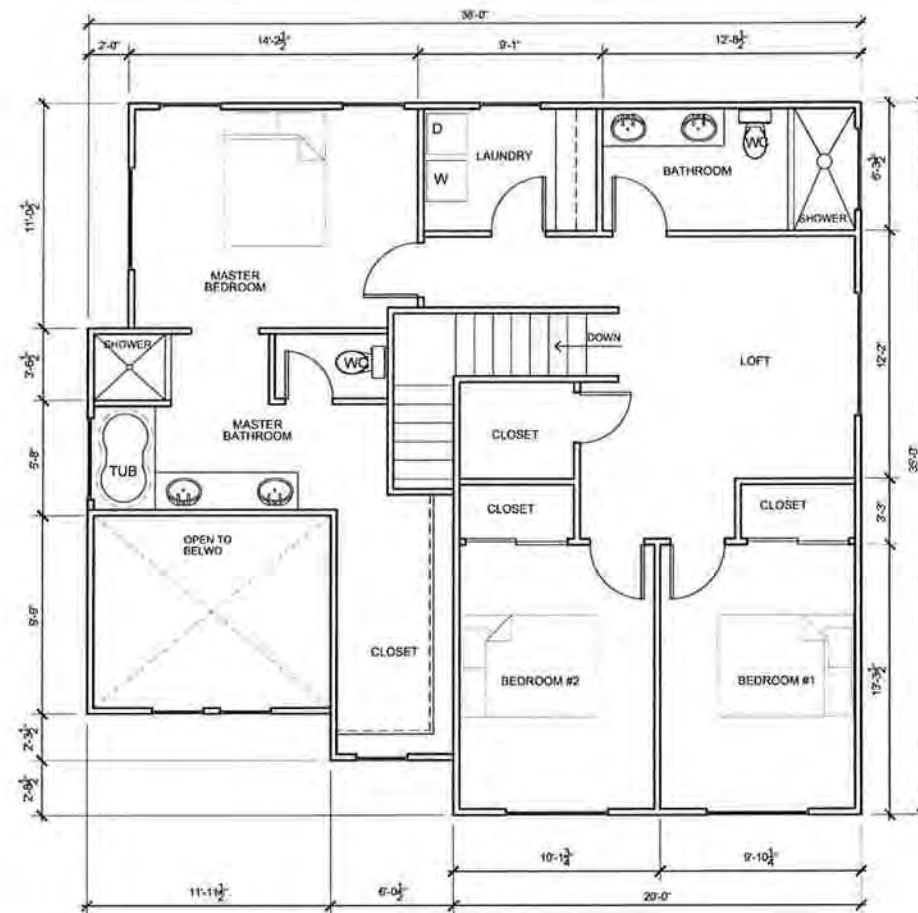
RIVERBANK, CA 95367



HOUSE-B

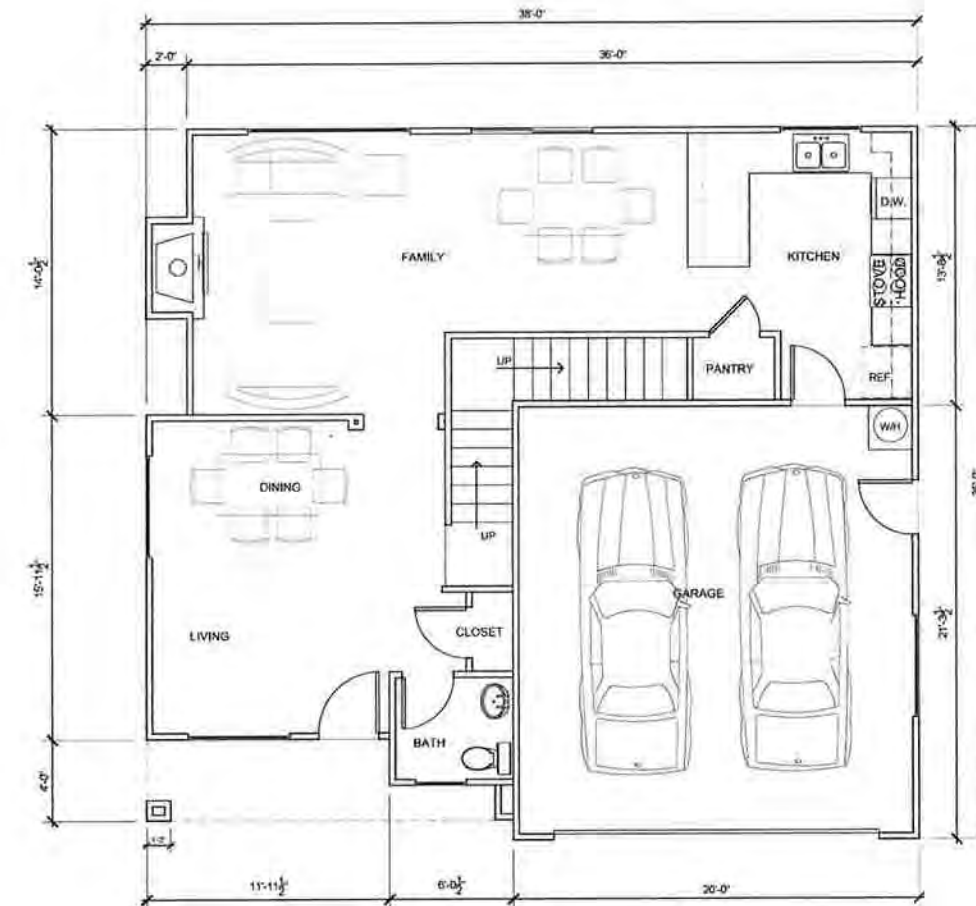
2/2

JUNE 13, 2018
236-17



PROPOSED SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"



PROPOSED FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"

MAIN HOUSE AREA:	
FIRST FLOOR	898 S.F.
SECOND FLOOR	1,070 S.F.
TOTAL MAIN HOUSE	1,968 S.F.
2-CAR GARAGE	426 S.F.

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367



2301 Coffee Road #5 Modesto, CA 95305
Phone: 209-428-0674 • edmondj@edjarchitect.com

HOUSE-C **1/3**

JUNE 13, 2018
236-17



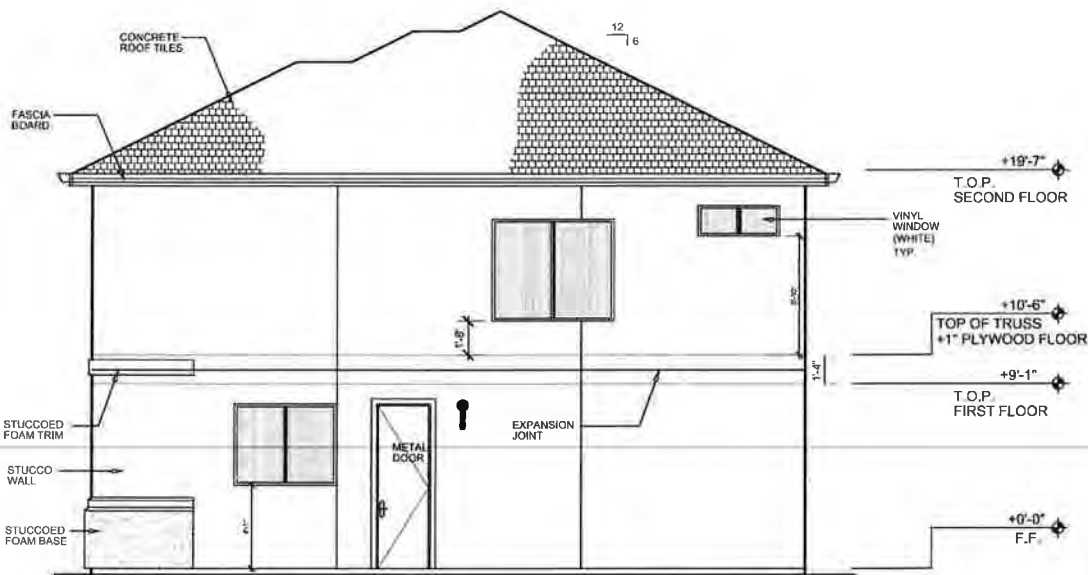
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



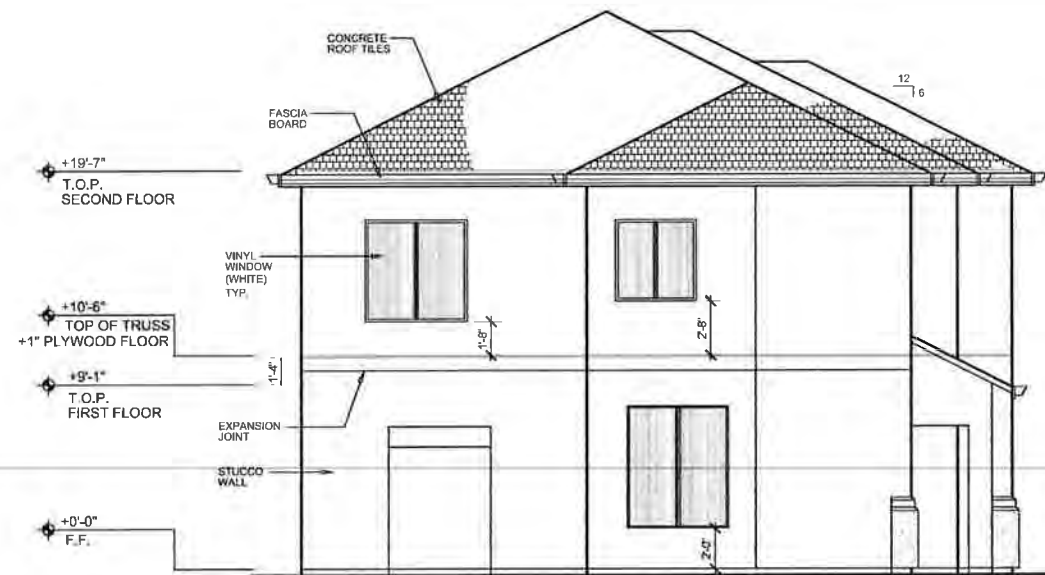
BACK ELEVATION

SCALE: 1/4" = 1'-0"



RIGHT ELEVATION

SCALE: 1/4" = 1'-0"



LEFT ELEVATION

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367



HOUSE-C

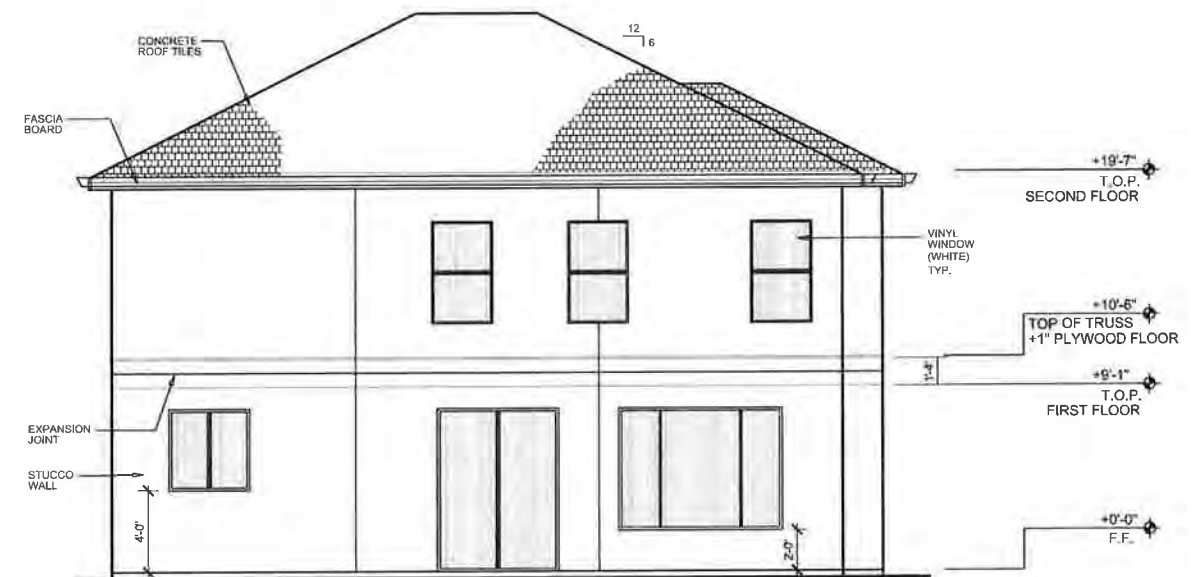
2/3

JUNE 13, 2018
236-17



FRONT ELEVATION

SCALE: 1/4" = 1'-0"



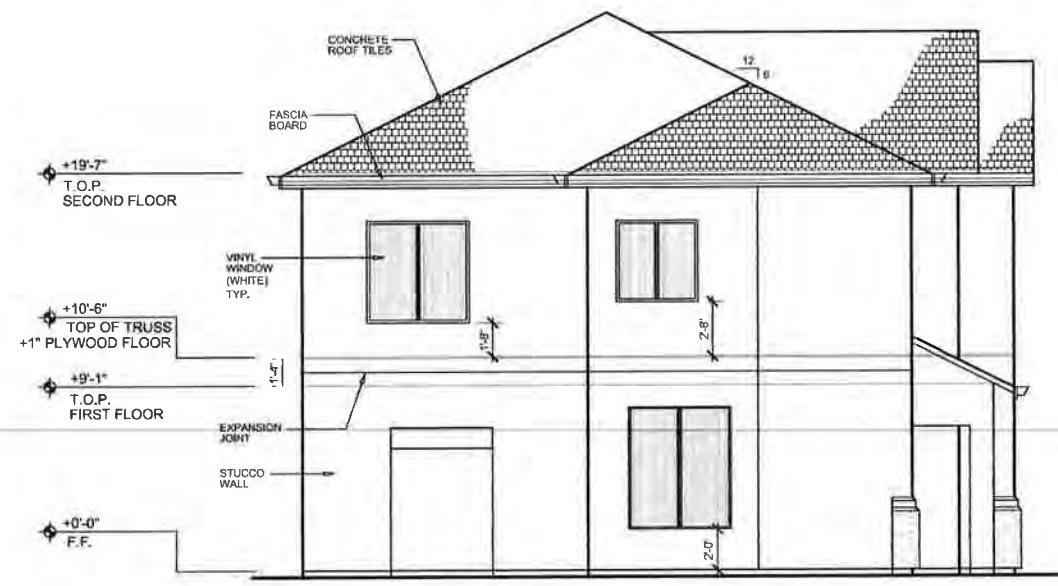
BACK ELEVATION

SCALE: 1/4" = 1'-0"



RIGHT ELEVATION

SCALE: 1/4" = 1'-0"



LEFT ELEVATION

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367



2301 Coffee Road #B Modesto, CA 95355
Phone: 209-408-0674 • edmond@edjacobs.com

HOUSE-C1 3/3

JUNE 13, 2018
236-17

- NOTE:**
- 1) NO TREES TO BE REMOVED.
 - 2) NO STRUCTURES TO BE REMOVED.
 - 3) SOIL TYPE: Mda MADERA SANDY LOAM
0-2% SLOPES
HYDROLOGIC SOIL GROUP: D
 - 4) DEPTH TO GROUNDWATER: 71 FEET



VICINITY
NOT TO SCALE

A.P.N. 132-015-023
CONTACT: EDMOND SHAMASS
615 13TH STREET
MODESTO, CA 95354
(209) 345-8316
eshamass@gmail.com

OWNER/
APPLICANT: EDMOND SHAMASS
615 13TH STREET
MODESTO, CA 95354

SITE ADDRESS: 7TH STREET (x SIERRA STREET)
RIVERBANK, CA 95367

ZONING: R-2 DUPLEX RESIDENTIAL
GENERAL PLAN: HDR HIGHER DENSITY RESIDENTIAL

TOTAL AREA: 1.17 AC.
WATER: CITY OF RIVERBANK
SANITARY SEWER: CITY OF RIVERBANK

PREPARED BY: MORRIS ENGINEERING & SURVEYING, INC.
334 S. YOSEMITE AVENUE, SUITE D
OAKDALE, CA 95361
(209) 845-9175



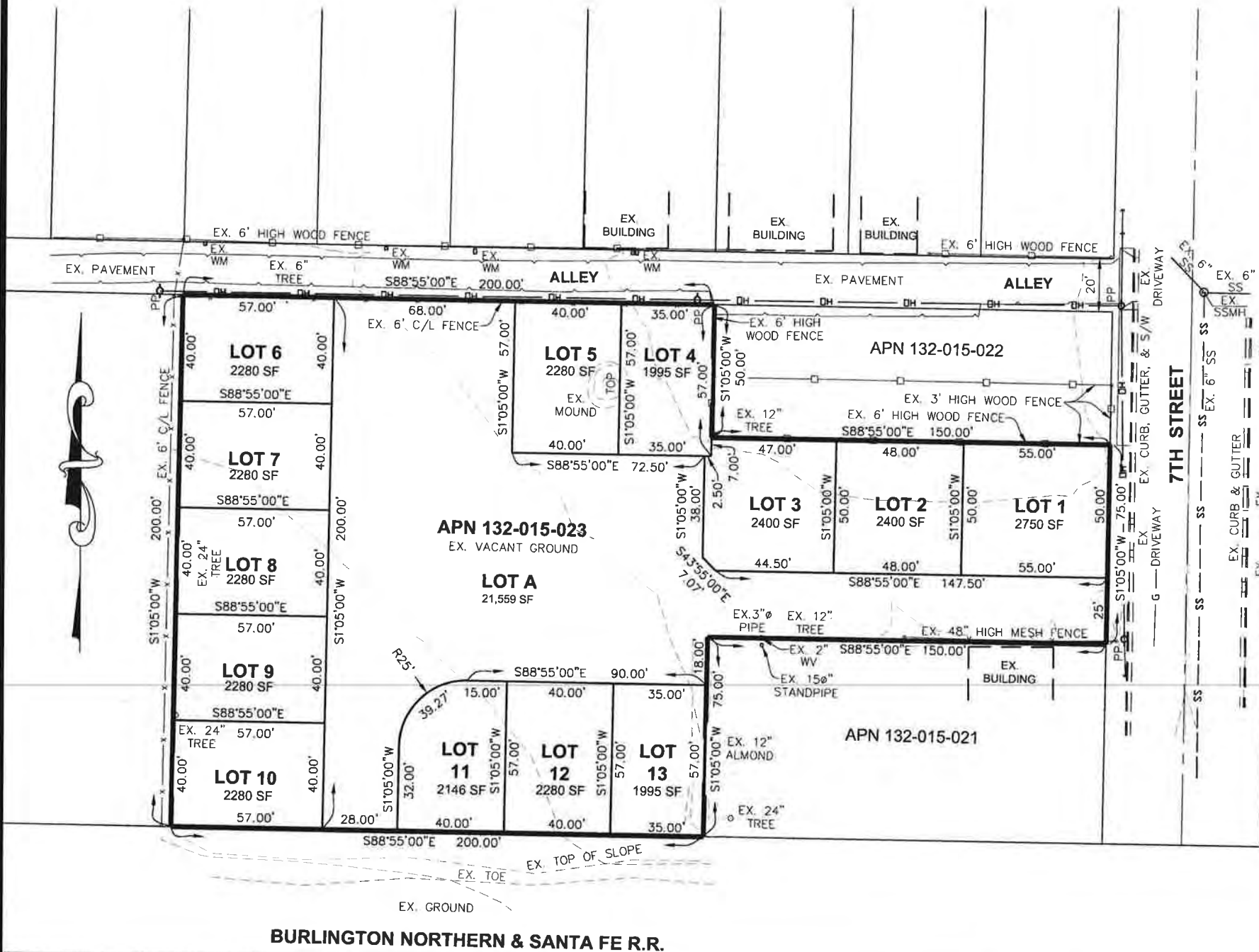
**TENTATIVE
SUBDIVISION MAP**

BEING ALL OF LOT 2 AND A PORTION
OF LOT 3 AS SHOWN ON THE EASTERN
ADDITION TO THE TOWN OF RIVERBANK
FILED IN BOOK 7 OF MAPS AT PAGE 30,
STANISLAUS COUNTY RECORDS, SITUATE IN
THE NORTHEAST QUARTER OF SECTION 25,
T.2S., R.9E., M.D.M., CITY OF RIVERBANK,
STANISLAUS COUNTY, CALIFORNIA
SCALE: 1"=30' JUNE 2018

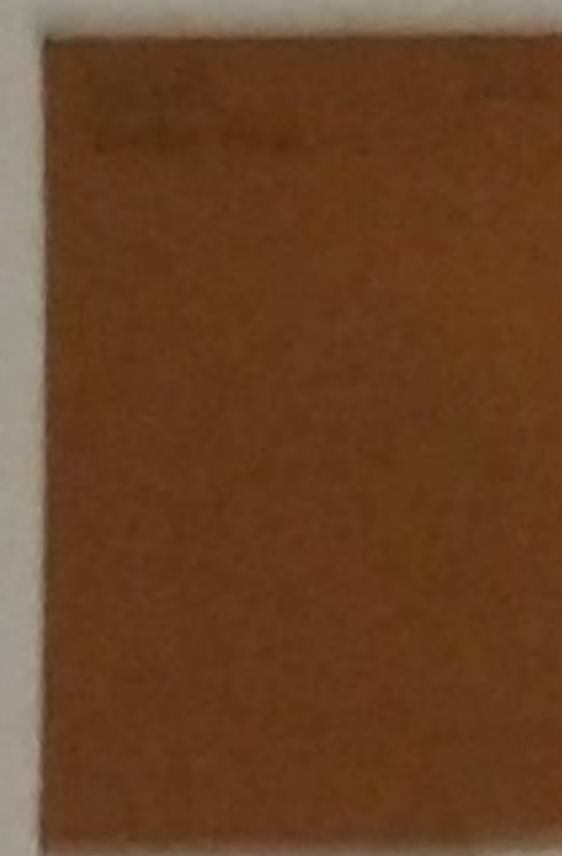
MORRIS
ENGINEERING & SURVEYING, INC.



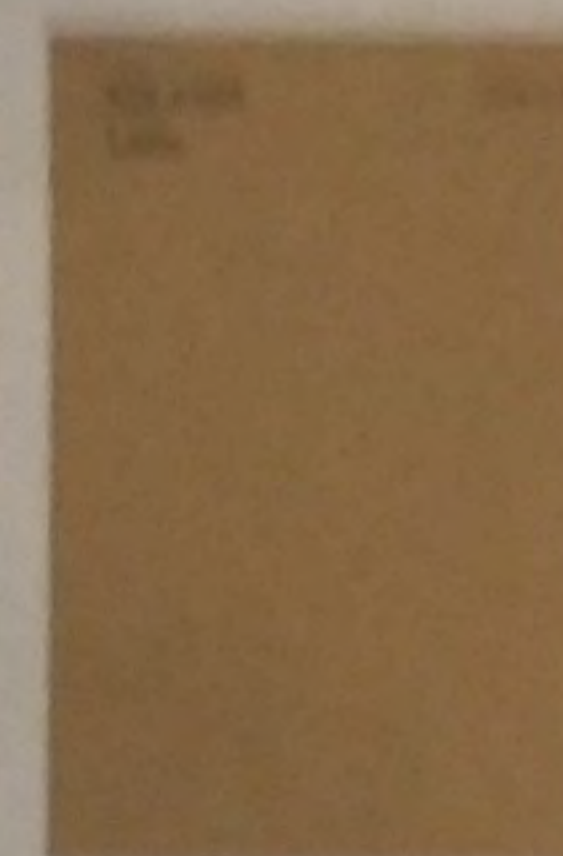
334 S. YOSEMITE AVENUE, SUITE D
OAKDALE, CA 95361
(209) 845-9175 (209) 845-9177 (FAX)



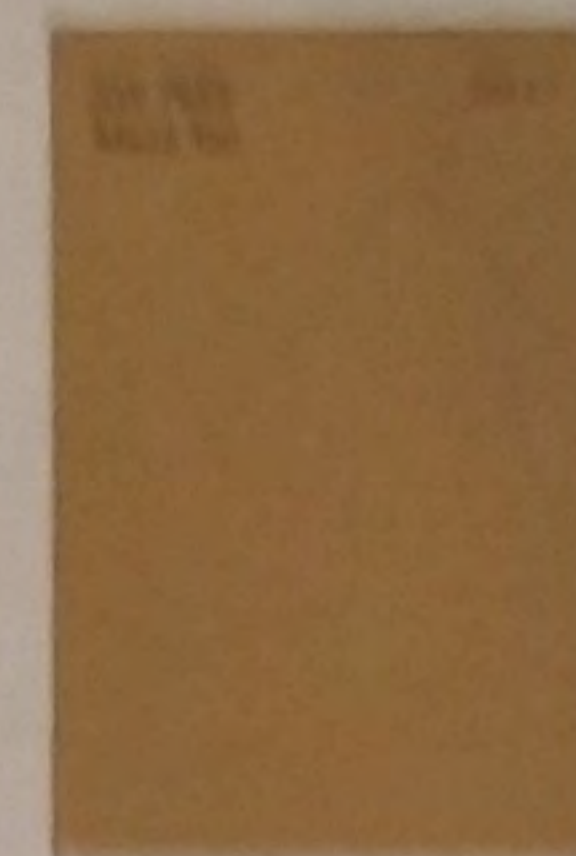
BODY COLORS



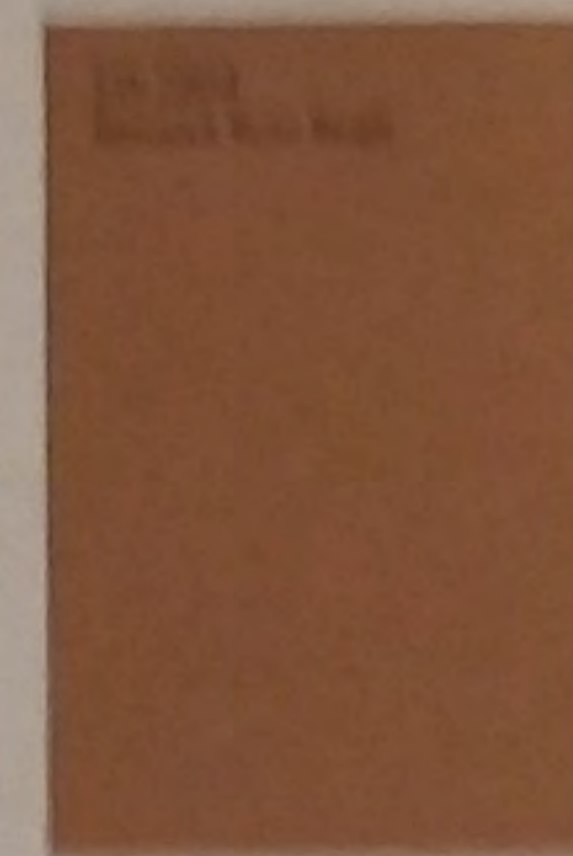
SHERWIN WILLIAMS
SW 6117
SMOKEY TOPAZ



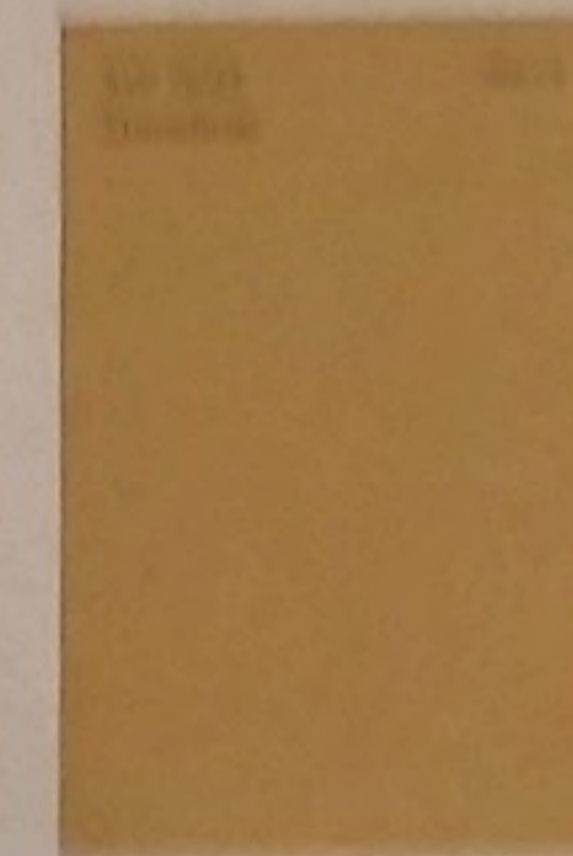
SHERWIN WILLIAMS
SW 6108
LATTE



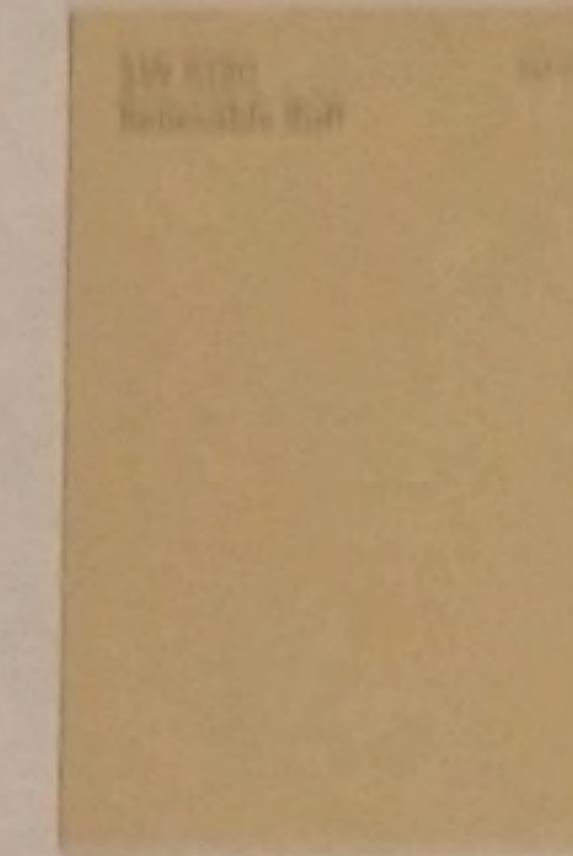
SHERWIN WILLIAMS
SW 7695
MESA TAN



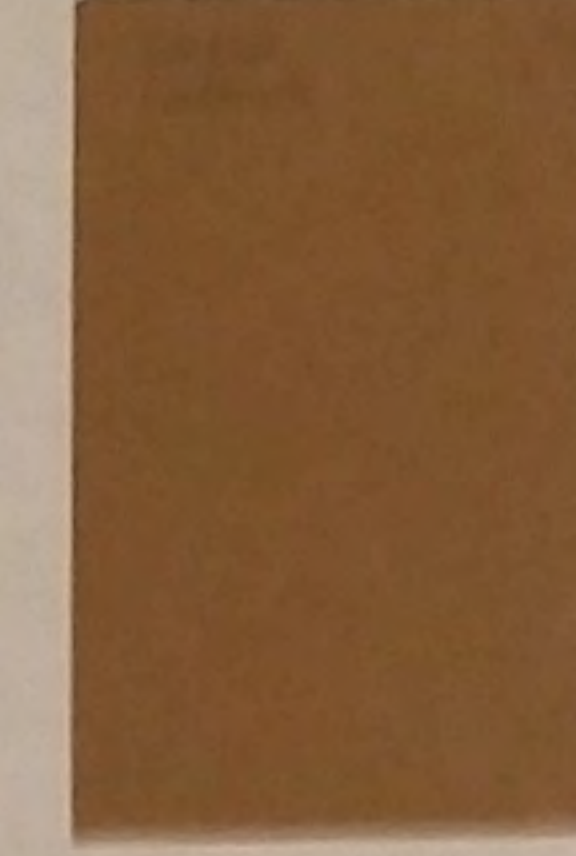
SHERWIN WILLIAMS
SW 2804
RENNICK ROSE BEIGE



SHERWIN WILLIAMS
SW 7693
STONEBRIAR

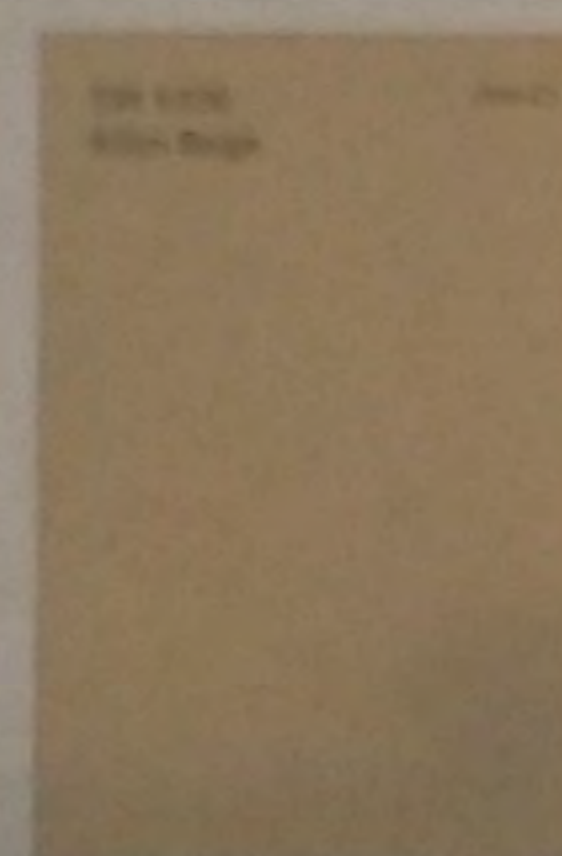


SHERWIN WILLIAMS
SW 6120
BELEIVABLE BUFF

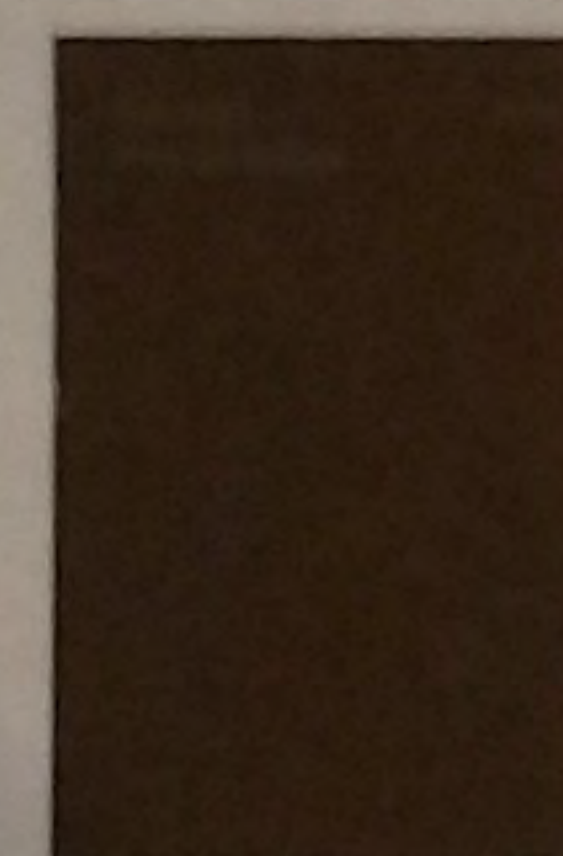


SHERWIN WILLIAMS
SW 6124
CARDBOARD

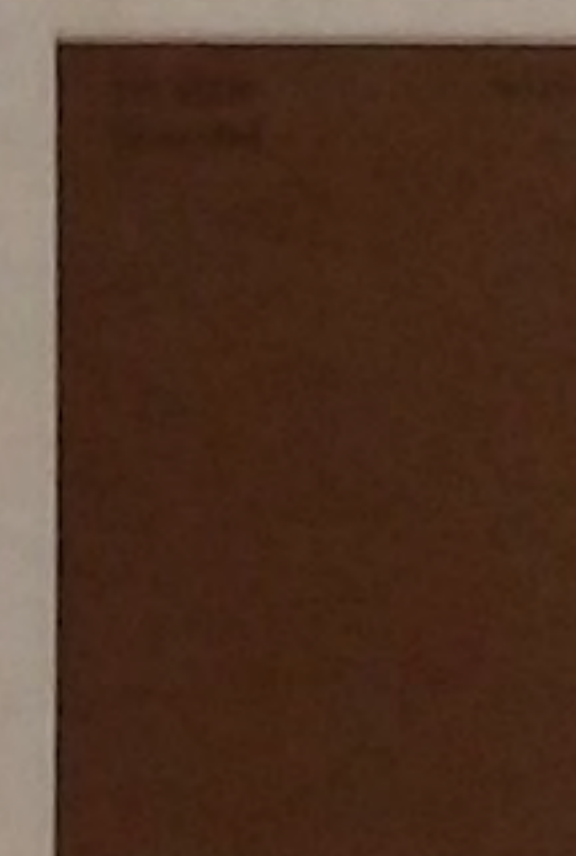
TRIMS / FASCIA / GUTTERS



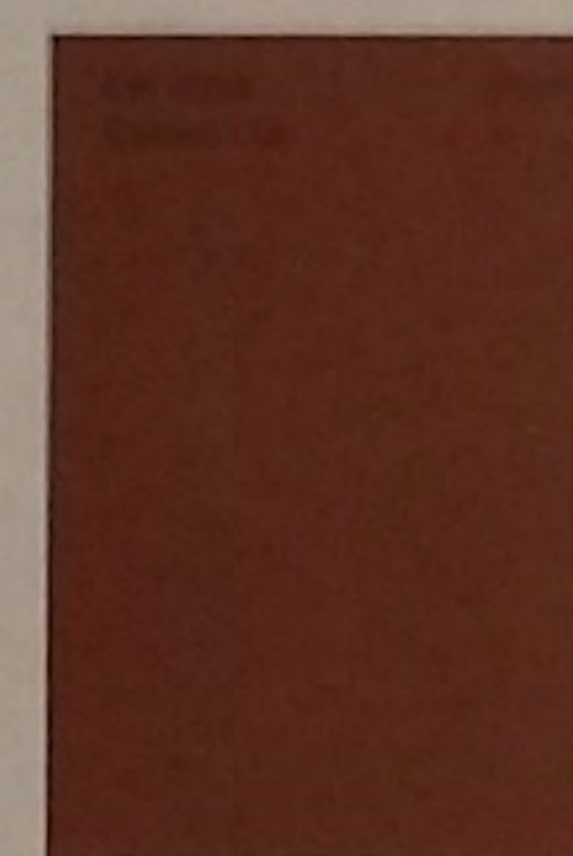
SHERWIN WILLIAMS
SW 6106
KILIM BEIGE



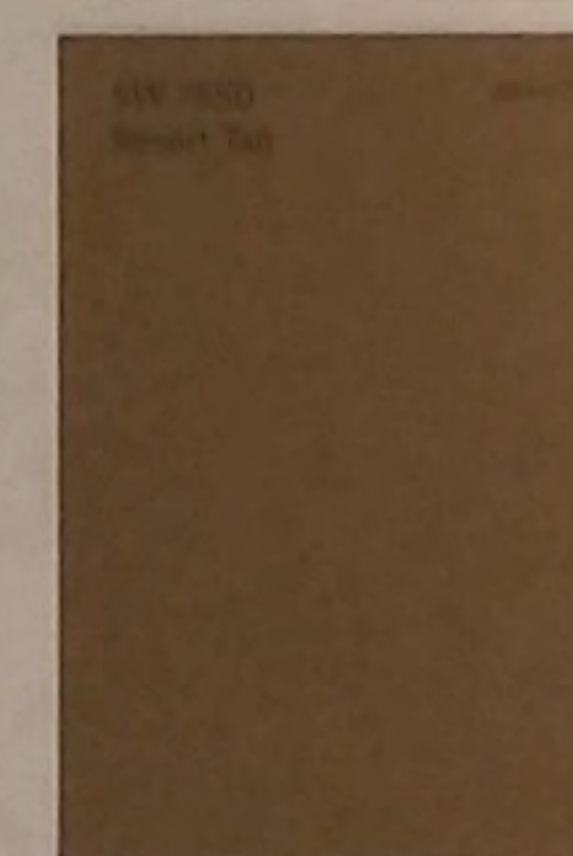
SHERWIN WILLIAMS
SW 6153
PROTEGE BRONZE



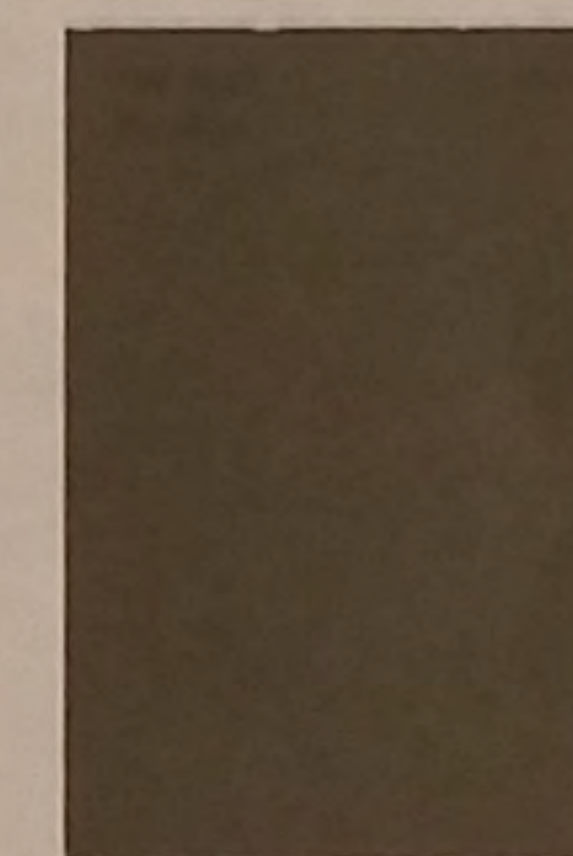
SHERWIN WILLIAMS
SW 6089
GROUNDED



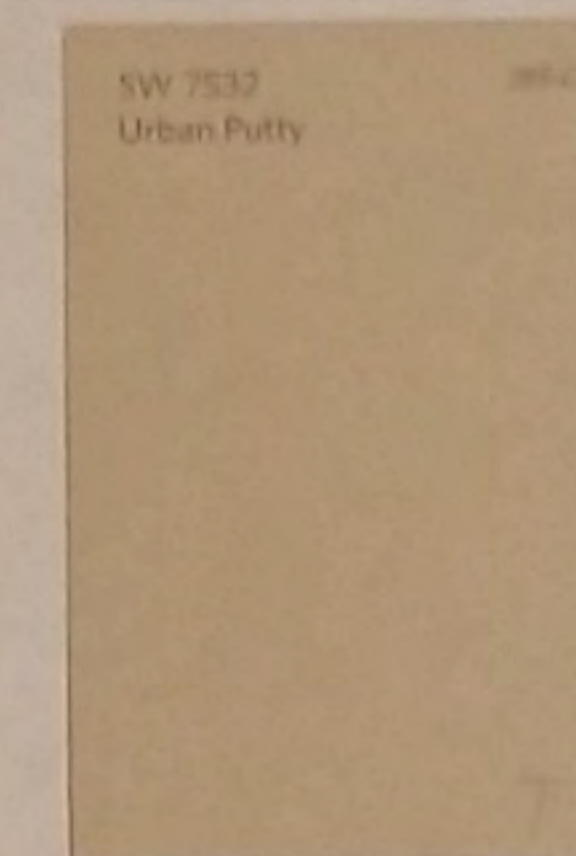
SHERWIN WILLIAMS
SW 6054
CANYON CLAY



SHERWIN WILLIAMS
SW 7550
RESORT TAN



SHERWIN WILLIAMS
SW 7047
PORPOISE



SHERWIN WILLIAMS
SW 7532
URBAN PUTTY

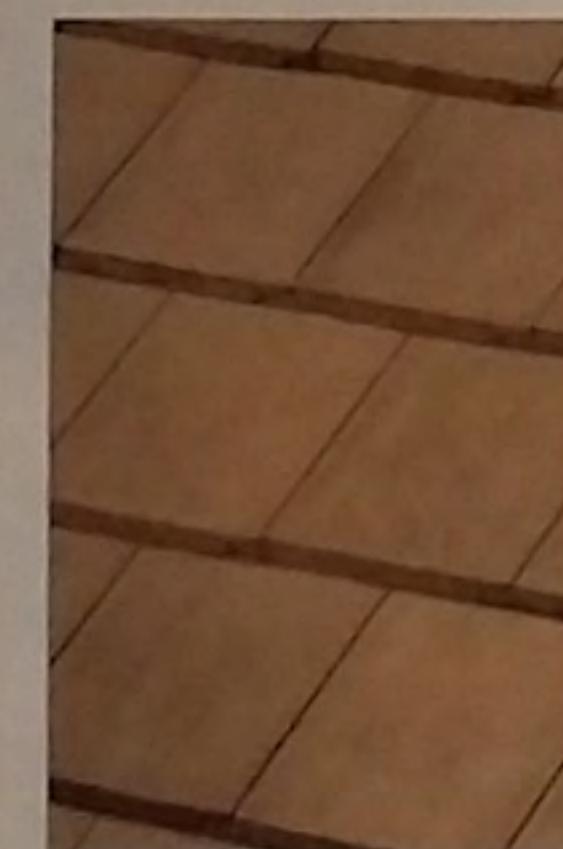
ROOF TILES



BORAL ROOFING
SAXTON 900 SLATE
NATURAL MARBLE



BORAL ROOFING
ESPANA 600
CALIFORNIA MISSION BLEND



BORAL ROOFING
SAXTON 900 SLATE
DUNES TAN



BORAL ROOFING
SAXTON 900 SLATE
CHARCOAL

CLIENT

EDMOND SHAMASS

MODESTO ♦ CALIFORNIA

PROJECT:

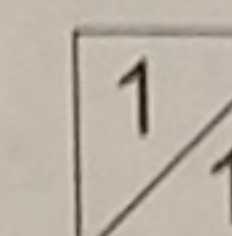
RIVERBANK COMMONS

6246 SEVENTH STREET

RIVERBANK, CA 95367



2301 Coffee Road #B ♦ Modesto, CA 95355
Phone: 209-408-0674 ♦ edmond@elijaharchitect.com



SEPTEMBER 27, 2017

**City of Riverbank
Planning Commission
Resolution No. 2018-008**

**APPROVAL OF ARCHITECTURE AND SITE PLAN REVIEW 2018-02 (17-0005)
FOR RIVERBANK COMMONS
SEVENTH AND SIERRA STREETS (APN 132-015-023)**

WHEREAS, An application has been received from Edmund Shamass, for the Architectural and Site Plan Review of a proposed fourteen (14) lot gated community located in Central Riverbank along Seventh street and an alley (APN 062-021-008); and

WHEREAS, The Planning Commission held a public hearing on October 16, 2018, to consider Architecture and Site Plan Review 02-2018 (17-0015); and

WHEREAS, The proposed project will not have a significant effect on the environment and is categorically exempt under Article 19 Section 15332 (a-e) Class 32, In-Fill Development Projects; and

WHEREAS, The Riverbank Planning Commission made the following findings:

1. The proposed project, together with the provisions for its design and improvements, is consistent with the goals, policies, program and uses of the General Plan.
2. The proposed Architecture and Site Plan Review along with the Conditions of Approval is in conformity with both the intent and provisions of the Zoning Ordinance, Title 153; and

WHEREAS, the project is consistent with the following General Plan policies:

1. Policy Land 3.3: The City will encourage "compact development" which places origination and destination points closer together (residence, stores, schools, places of work, etc.), allowing for alternatives to vehicular travel.
2. Policy Land 3.4: Gated projects are only permissible only if connectivity with surrounding areas will not be significantly impaired. The City maintains the sole authority to approve a project that includes gates exclusivity in cases where a property is located where through connections would not be possible to other existing development or planned future developed areas. The City will not allow gates in unless fire access can be guaranteed according to Stanislaus Consolidated Fire Protection District. This exception to the general preference for

connectivity and access can be made where a project consists solely of unique and locally desired land uses, such senior housing.

3. Policy Design 3.6: The City will evaluate proposed projects, plans, and subdivision requests involving limited or controlled access according to the following criteria and consistency with other relevant General Plan policy. Access controls may be approved by the City if the following conditions are met:
 - The controlled access project provides a community and/or internal project benefit or satisfies a specific community need, such as, but not limited to: enhancing community safety and security; improving existing or projected traffic impacts; promoting community cooperation or identify; or, significantly enhancing the quality of life.
 - The limited success project includes alternative means of reducing traffic impacts as described in the Street Design Manual, and measures such as gateways, bollards, median-chokers, curb pop-outs, channelization of intersections, left/right turn only directional signs, one-way streets, and parking restrictions.
 - The limited or controlled access project does not significantly displace existing or projected future traffic or parking impacts to adjacent areas.
 - Public access is not denied to open spaces, river, parks, trails, commercial areas, transit stops, major streets, schools, or public facilities.
 - The street system, gated entry, and premises identification meet all criteria established in State regulations and City ordinances, policies, and design manuals.
 - Street access to gated projects has been provided for police, fire, and other emergency vehicles by means that are acceptable to the providers of those services.
 - Access will be provided for postal service, trash pick-up, and school buses. Pursuant to the Municipal Code, the City will not collect trash on private property.
 - The City shall be granted general utility easements and utility access easements on private streets.

- The location of the gates shall provide adequate stacking areas to accommodate traffic to the project. Stacking shall not adversely impact circulation on any public street.
 - Walls or other enclosures attached to gates shall use a combination of setbacks, landscaping, civic enhancements and human scale articulation and/or other design features. The enclosures will be governed by relevant sections of the municipal code related to sight distances.
4. Policy Design 4.2: Approved projects, plans, and subdivisions shall provide diversity among dwelling units in the use of color, building materials, floor plan layouts, square footages, and roof lines. Approved projects, plans, and subdivision requests shall maintain continuity of a few overall urban design features to provide context between individual units and the neighborhood.
 5. Policy Design 4.3: The City will encourage individually owned garages to be clustered or placed beneath units with common driveway access to maximize efficient use of the overall site area.
 6. Policy Design 4.4: The City will allow for small front-yard setbacks in single-family residential districts to permit greater design flexibility and ensure an inviting human scale.
 7. Policy Design 4.6: The City will allow common ownership of parking, courtyard gardens, recreational facilities, and/or open spaces for cluster, cottage, and attached single family residential housing.
 8. Policy ED 10.1: The City will ensure that the quality and type of housing in the community will be attractive to a wide range of residents.

WHEREAS, the request and plans of Edmund Shamass, Applicant, are hereby granted and approved, subject to the following conditions:

1. Applicant shall comply with the City of Riverbank Standard Conditions as contained in Planning Commission Resolution 2013-014, including annexing into Community Facilities District 2016-01, or receive confirmation from the Community Development Director that a specific condition or conditions does not apply to the subject project; and
2. The applicant shall build the entire project according to the site plans and elevations on file with the Community Development Department and as presented to the Planning Commission as part of this action; and

3. The Community Development Director shall approve block walls and fencing; and
4. Three (3) sets of landscape and irrigation plans shall be prepared and submitted with fee for review and approval by the City's contract landscape architect. The tot lot shall be fully landscaped and contain playground equipment with shade structure, picnic tables, trash receptacles, and a barbeque area to the satisfaction of the Community Development Director; and
5. The Subdivision Improvement Agreement shall be signed and submitted to the Community Development Director before Final Map adoption; and
6. Private street names shall be approved by City Council; and
7. Any subdivision signage shall be approved under separate permit.

NOW THEREFORE, BE IT RESOLVED by the City of Riverbank Planning Commission that Architecture and Site Plan Review 02-2018 is hereby approved, subject to those conditions established by Resolution No. 2018-08 and as illustrated in Exhibit "A": Site Plans and Elevations date stamped July 31, 2018.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 16th of October, 2018, motioned by Commissioner Ball, seconded by Commissioner Hughes, and upon roll call was carried by the following vote 5-0

AYES: Commissioners: Ball, Hughes, Stewart, Fenrich and Link

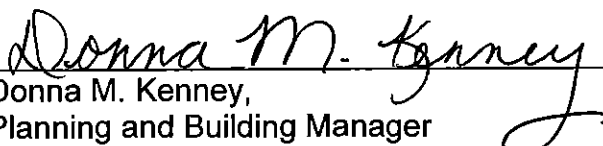
NOES: None

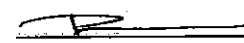
ABSENT: Commissioner Chair: Dinan

ABSTAIN: None

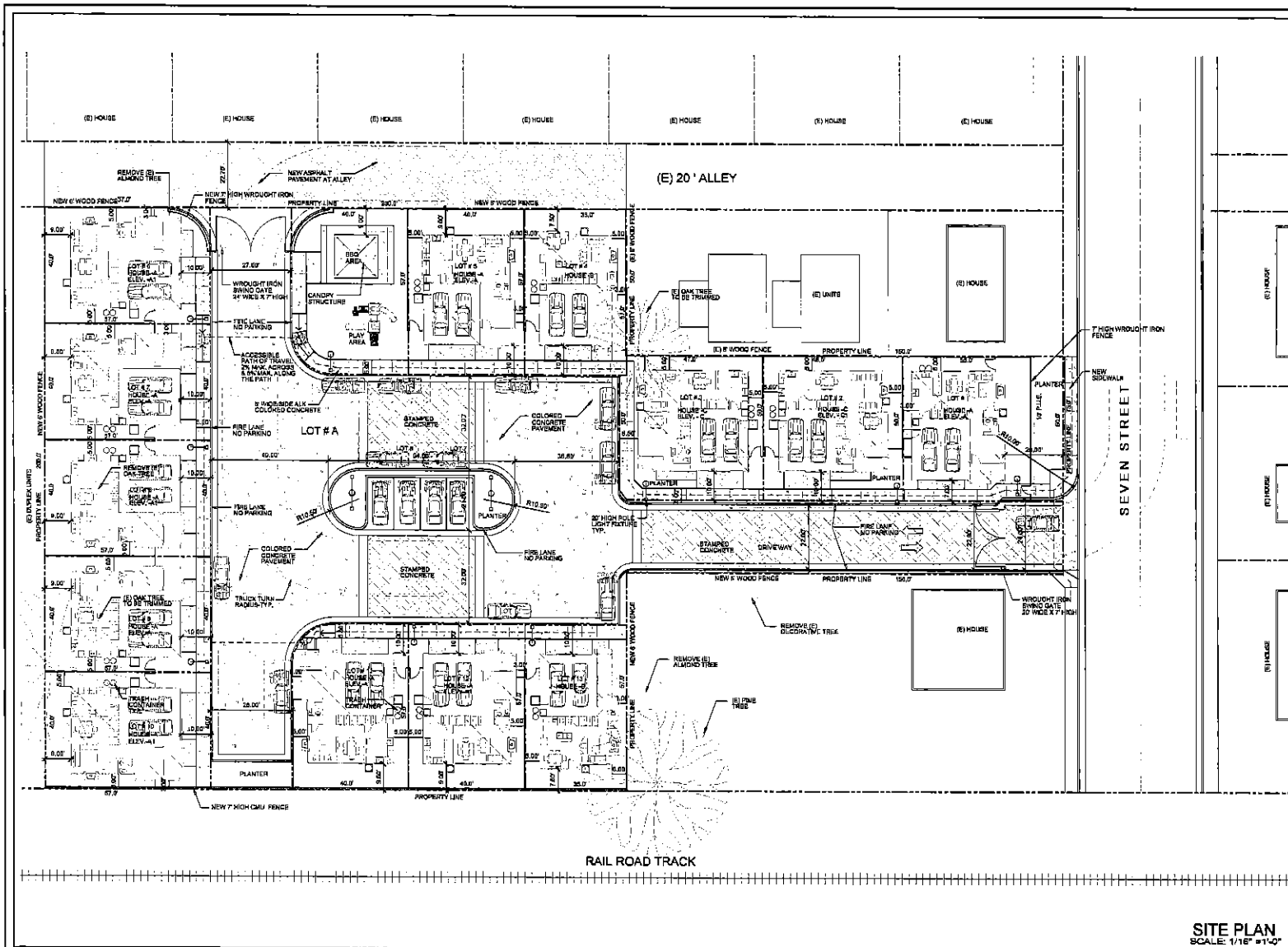
Attest:

Approved:


Donna M. Kenney,
Planning and Building Manager


Robert Ball, Vice Chair
Planning Commission

Exhibits: A – Site Plans and Elevations



PROJECT DATA

A.P.N.	132-15-03
PROPOSED USE:	SINGLE FAMILY RESIDENTIAL
OCCUPANCY:	R3-U
TYPE OF CONSTRUCTION:	V-B (FIRE SPRINKLERED)
ZONING:	PLANNED DEVELOPMENT
TOTAL PROJECT SITE AREA	51,250 S.F.
LOT #1	2,750 S.F.
LOT #2	2,400 S.F.
LOT #3	2,400 S.F.
LOT #4	1,995 S.F.
LOT #5	2,260 S.F.
LOT #6	2,260 S.F.
LOT #7	2,260 S.F.
LOT #8	2,260 S.F.
LOT #9	2,260 S.F.
LOT #10	2,260 S.F.
LOT #11	2,146 S.F.
LOT #12	2,260 S.F.
LOT #13	1,995 S.F.
LOT-A	21,559 S.F.

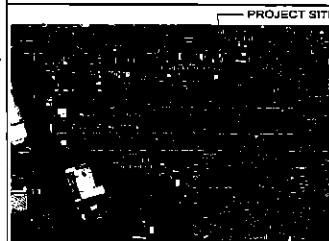
HOUSE-A	
TOTAL MAIN HOUSE	1,578 S.F.
2-CAR GARAGE	427 S.F.
HOUSE-B	
TOTAL MAIN HOUSE	1,405 S.F.
2-CAR GARAGE	427 S.F.
HOUSE-C	
TOTAL MAIN HOUSE	1,866 S.F.
2-CAR GARAGE	427 S.F.

MATRIX OF R-1 REQUIREMENT VS. PD

REGULATION	R-1 ZONING	PD ZONE
LOT SIZE (MINIMUM)	5,000 S.F.	1,995 S.F.
LOT WIDTH (MINIMUM)	80 FT.	35 FT.
FRONT SETBACK (GARAGE)	20 FT. MIN.	7 FT.
SIDE SETBACK (MINIMUM)	5 FT.	3 FT.

- PD AMENITIES
- ☐ GATED COMMUNITY
 - ☐ ENHANCED LANDSCAPING
 - ☐ COLORED CONCRETE SIDE WALK
 - ☐ COLORED STAMPED CONCRETE PAVEMENT
 - ☐ COLORED STAMPED CONCRETE PAVEMENT
 - ☐ UPGRADED GARAGE DOORS
 - ☐ COMMON BBQ AREA WITH COVERED CANOPY
 - ☐ ENHANCED LIGHTING FIXTURE AND POLE

VICINITY PLAN



SITE PLAN
SCALE: 1/16" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

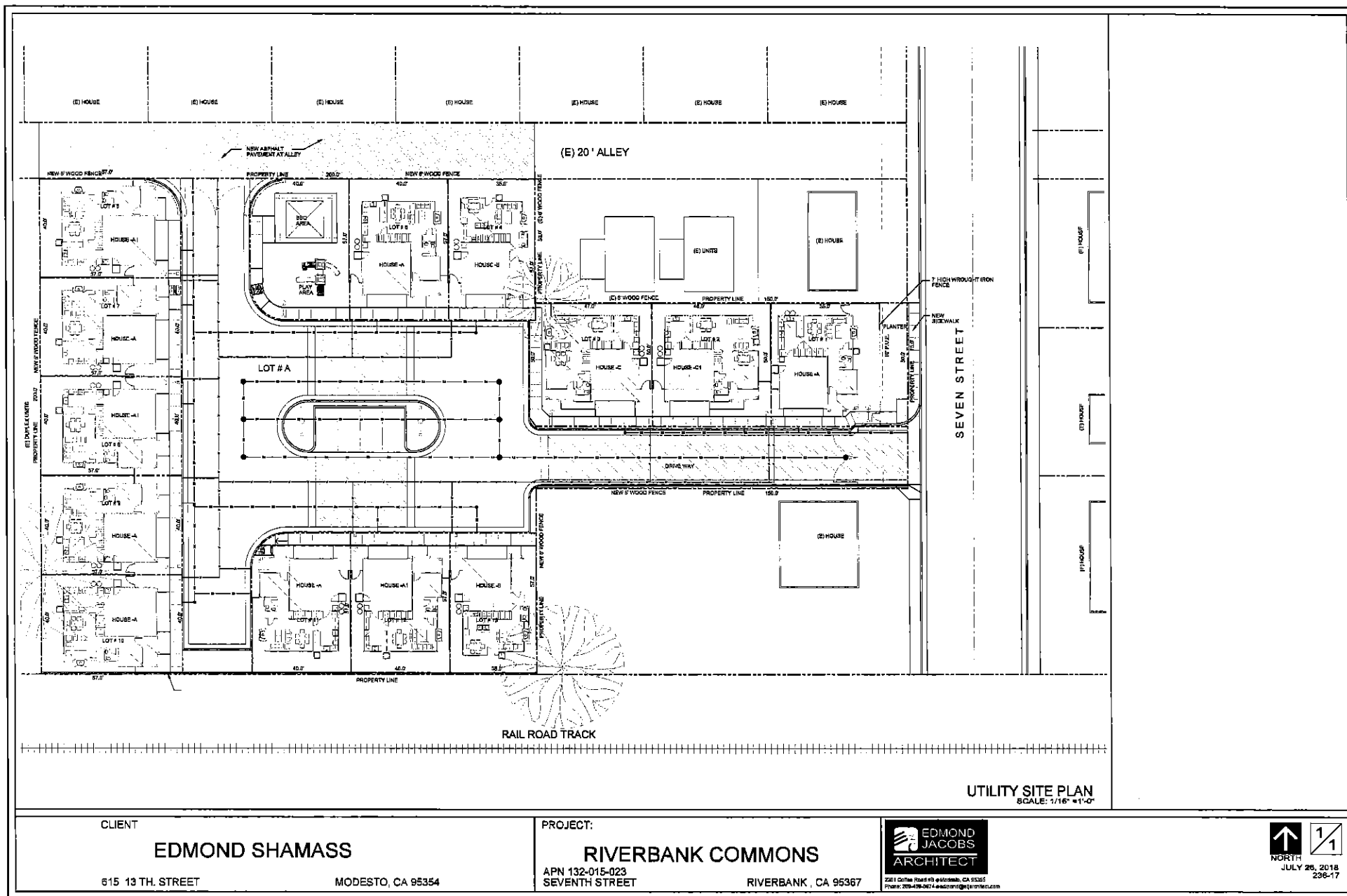
RIVERBANK, CA 95367



2011 Coffey Road #9 Edmonds, CA 95055
Phone: 708-464-0476 Email: edj@edjacobs.com



JULY 28, 2018
236-17



CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

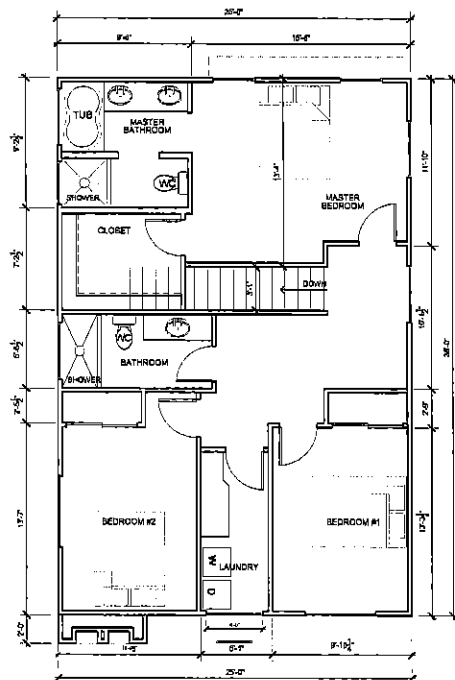
RIVERBANK, CA 95367



2461 Cotton Road #9 Modesto, CA 95305
Phone: 209-408-0674 edmond@edmondjacobs.com

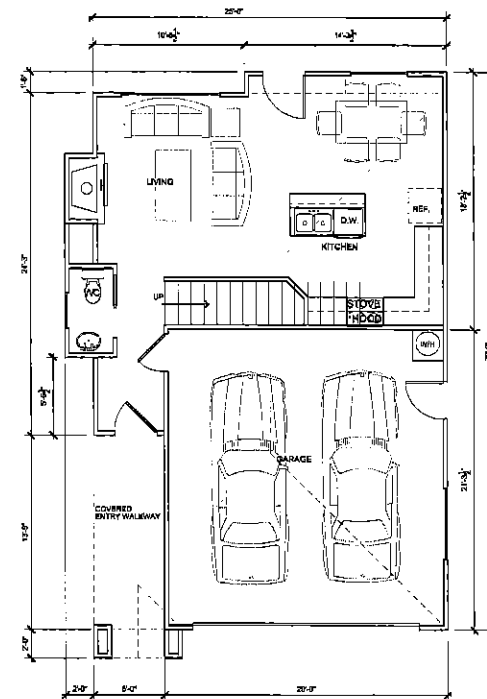
UTILITY SITE PLAN
SCALE: 1/16" = 1'-0"





PROPOSED SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"



PROPOSED FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"

MAIN HOUSE AREA:	
FIRST FLOOR	458 S.F.
SECOND FLOOR	950 S.F.
TOTAL MAIN HOUSE	1,408 S.F.
2-CAR GARAGE	427 S.F.

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367

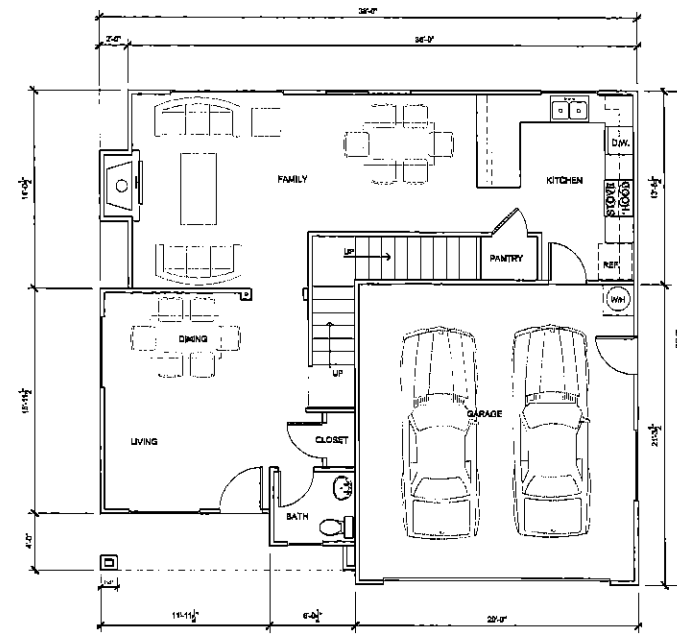
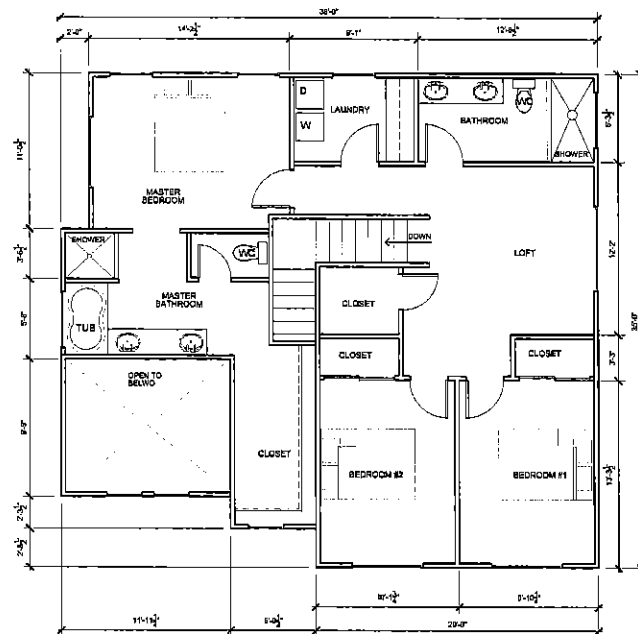


2301 Delta Road #B • Modesto, CA 95301
Phone: 209-463-0274 • edmond@edjacobs.com

HOUSE-B

1/2

JULY 28, 2018
236-17



MAIN HOUSE AREA:	
FIRST FLOOR	896 S.F.
SECOND FLOOR	1,070 S.F.
TOTAL MAIN HOUSE	1,966 S.F.
2-CAR GARAGE	426 S.F.

PROPOSED SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"

PROPOSED FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

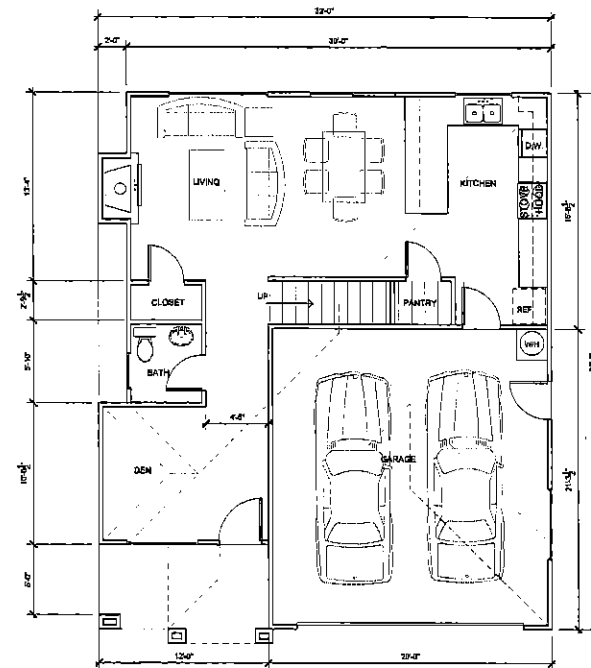
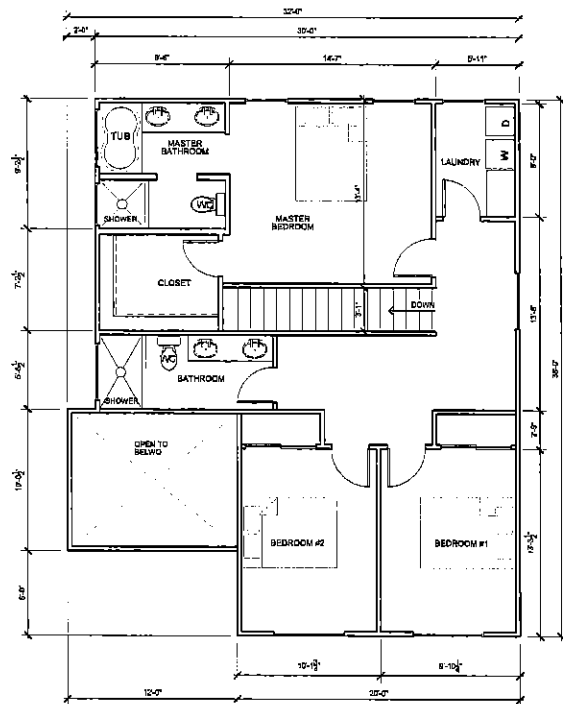
RIVERBANK, CA 95367



2201 Colton Road #9 Modesto, CA 95355
Phone: 209-403-0674 edmond@edmondjacobs.com

HOUSE-C 1/3

JULY 26, 2016
208-17



MAIN HOUSE AREA:	
FIRST FLOOR	873 S.F.
SECOND FLOOR	1005 S.F.
TOTAL MAIN HOUSE	1,878 S.F.
2-CAR GARAGE	427 S.F.

PROPOSED SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"

PROPOSED FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367



2301 Collier Road #8 • Modesto, CA 95305
Phone: 209-465-0374 • edmon@edmonjacobs.com

HOUSE - A 1/3

JULY 26, 2015
236-17



SCALE: 1/4" = 1'-0"



SCALE: 1/4" = 1'-0"



SCALE: 1/4" = 1'-0"



SCALE: 1/4" = 1'-0"

EDMOND SHAMASS

MODESTO, CA 95354

RIVERBANK COMMONS

RIVERBANK, CA 95367



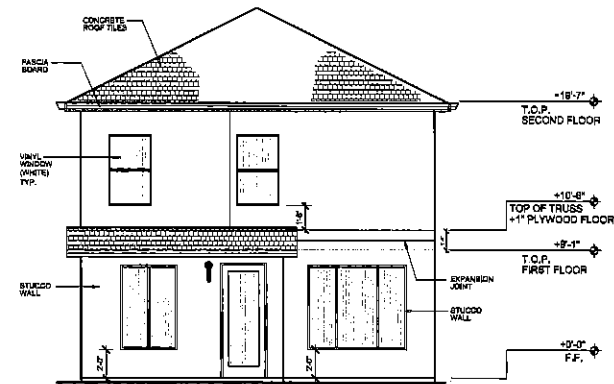
JULY 28, 2018
238-17

2001 Orling Road #B • Morristown, TN 37815
Phone: 209-426-0274 • adamand@earthlink.net



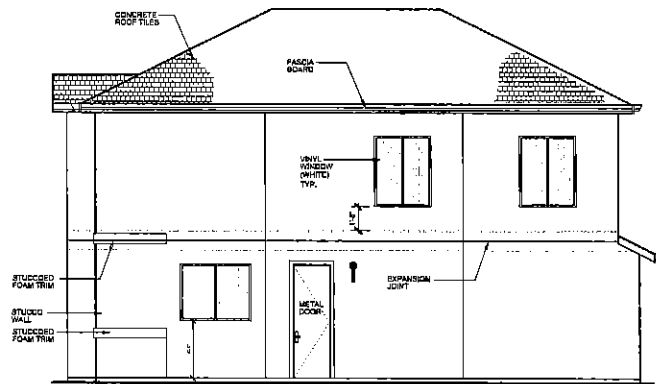
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



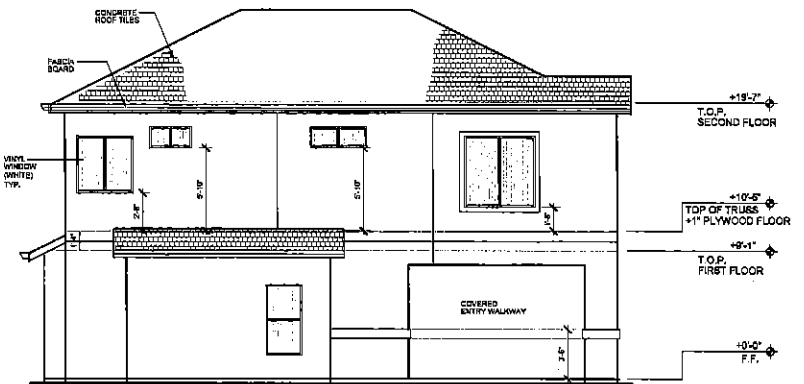
BACK ELEVATION

SCALE: 1/4" = 1'-0"



RIGHT ELEVATION

SCALE: 1/4" = 1'-0"



LEFT ELEVATION

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367



2201 Duffin Road #6 Modesto, CA 95215
Phone: 209-463-6874 • edmondjacobsarchitect.com

HOUSE-B 2/2

JULY 25, 2018
238-17



SCALE: 1/4" = 1'-0"



SCALE: 1/4" = 1'-0"



SCALE: 1/4" = 1'-0"



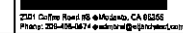
SCALE: 1/4" = 1'-0"

EDMOND SHAMASS

MODESTO, CA 95354

RIVERBANK COMMONS

RIVERBANK, CA 95387



HOUSE -A
ELEVATION A

2/3

JULY 28, 2015
236-17



SCALE: 1/4" = 1'-0"



SCALE: 1/4" = 1'-0"



SCALE: 1/4" = 1'-0"



SCALE: 1/4" = 1'-0"

EDMOND SHAMASS

MODESTO, CA 95354

RIVERBANK COMMONS

RIVERBANK, CA 95367

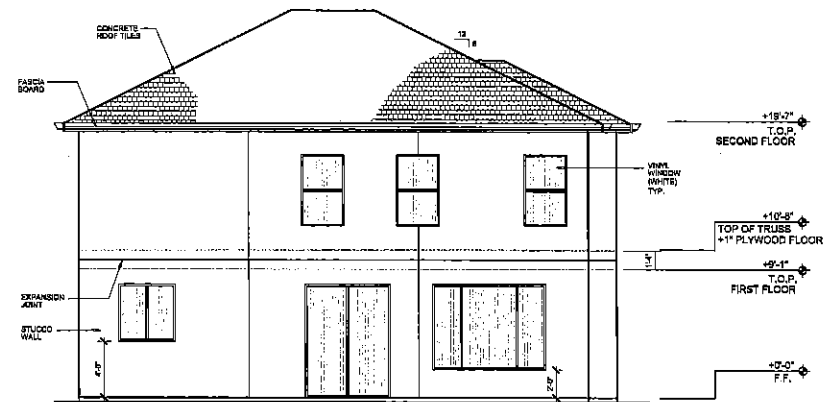


JULY 26, 2018
236-17



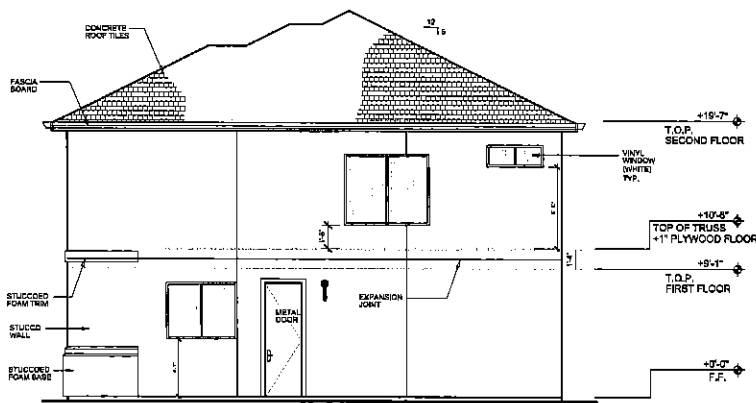
FRONT ELEVATION

SCALE: 1/4" = 1'-0"



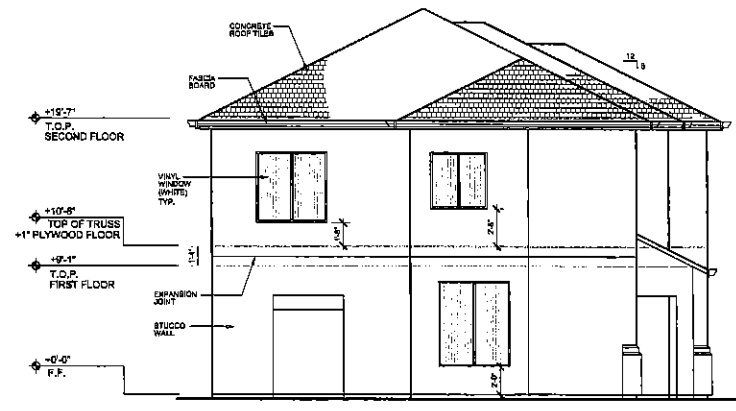
BACK ELEVATION

SCALE: 1/4" = 1'-0"



RIGHT ELEVATION

SCALE: 1/4" = 1'-0"



LEFT ELEVATION

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367



2201 Carline Road #8 Modesto, CA 95358
Phone: 209-634-0677 email: ed@edjacobs.com

HOUSE-C
ELEVATION C

2/3

JULY 28, 2016
236-17



BUILDING -A FRONT ELEVATION COLOR CONCEPT

SCALE: 1/4" = 1'-0"



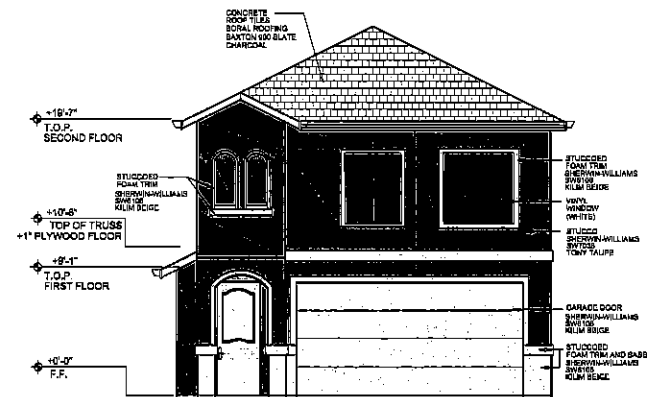
BUILDING A1 - FRONT ELEVATION COLOR CONCEPT

SCALE: 1/4" = 1'-0"



BUILDING C1 - FRONT ELEVATION COLOR CONCEPT

SCALE: 1/4" = 1'-0"



BUILDING B - FRONT ELEVATION COLOR CONCEPT

SCALE: 1/4" = 1'-0"

CLIENT

EDMOND SHAMASS

615 13 TH. STREET

MODESTO, CA 95354

PROJECT:

RIVERBANK COMMONS

APN 132-015-023
SEVENTH STREET

RIVERBANK, CA 95367



2301 Carter Road SE Modesto, CA 95305
Phone: 202-458-0474 • edmond@edmondjacobs.com

COLOR CONCEPTS



JULY 26, 2018
238-17

**City of Riverbank
Planning Commission
Resolution No. 2018-009**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK
RECOMMENDING TO THE CITY COUNCIL THE APPROVAL OF ORDINANCE NO. 2018-XXX
TO REZONE 1.1± ACRES, KNOWN AS RIVERBANK COMMONS TO PLANNED DEVELOPMENT,
LOCATED AT SEVENTH AND SIERRA STREETS APN: 132-015-023**

WHEREAS, an application has been received from Edmund Shamass, with a proposal to subdivide approximately 1.1± acres into thirteen (13) single family lots, and Lot A which allows for a net density of 16+ dwelling units per acre; and

WHEREAS, the project site is currently zoned Planned Development with a General Plan Land Use designation of High Density Residential (HDR); and

WHEREAS, the applicant is proposing to rezone the property to a new Planned Development (PD) from an expired Planned Development (PD); and

WHEREAS, the Planning Commission held a public hearing on October 16, 2018, to consider Zoning Ordinance Amendment (Rezone) 01-2018; and

WHEREAS, notices of the public hearing on the Rezone was published in the *Riverbank News*, a newspaper of general circulation and a Notice of Development Permit large sign was posted at the project site on October 3, 2018; 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 October 2, 2018; and

WHEREAS, the Planning Commission has reviewed the proposed Rezone and conducted a public hearing on October 16, 2018 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 APPROVAL OF ORDINANCE NO. 2018-XXX, REZONING 1.1± 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 a General Plan Land Use Designation of High Density Residential (HDR), and a current zoning of Planned Development (PD). The project proposes a Rezone to new Planned Development.
2. Each individual unit of the development can be 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 total development.
3. 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.
4. Deviations from the standard ordinance requirements is warranted by the unusual design and additional amenities are incorporated in the development plan which offers certain redeeming features to compensate for any deviations that may be permitted.
5. The principles incorporated in the proposed master plan identify unique characteristics which could not otherwise be achieved under other zoning districts.
6. The PD rezone was not initiated by the City, so the previous findings and a master plan 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 proposed project will not have a significant effect on the environment and is categorically exempt under Article 19 Section 15332 (a-e) Class 32, Infill Development projects.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 16th of October, 2018 by the following roll call vote 5-0:

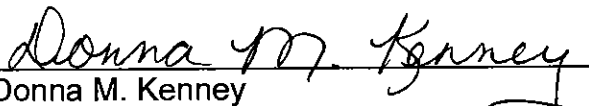
AYES: Commissioners: Ball, Hughes, Stewart, Fenrich and Link

NOES: None

ABSENT: Commissioner Chair: Dinan

ABSTAIN: None

Attest:


Donna M. Kenney
Planning and Building Manager

Approved:


Robert Ball, Vice Chair
Planning Commission

Attachment: Exhibit "A" – Draft City Council Ordinance No. 2018-XXX

**EXHIBIT A
CITY OF RIVERBANK
ORDINANCE NO. 2018-XXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK
APPROVING A REZONE OF 1.1± ACRES TO PLANNED DEVELOPMENT,
LOCATED AT SEVENTH AND SIERRA STREETS (APN 132-015-023) –
A PROJECT KNOWN AS RIVERBANK COMMONS**

WHEREAS, an application has been received from Edmund Shamass, with a proposal to subdivide approximately 1.1± acres into thirteen (13) single family lots, Lot A, which allows for a net density of 16+ dwelling units per acre; and

WHEREAS, the City of Riverbank Planning Commission conducted a Public Hearing on Tuesday, October 16, 2018 to consider the proposed Zoning Ordinance Amendment; and

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

1. An application has been received from Edmund Shamass with a proposal to subdivide approximately 1.1± acres into thirteen (13) single-family residential lots, and Lot A, which allows for a net density of 16+ dwelling units per acre; and
2. The project site is currently zoned Planned Development (PD) with a General Plan Land Use Designation of High Density Residential (HDR); and
3. The applicant is proposing to rezone the subject property to a new Planned Development (PD); and
4. Notice of the public hearing on the proposed Zoning Ordinance Amendment was published in the *Riverbank News*, a newspaper of general circulation, on October 3, 2018; and,
5. Notices of the public hearing on the proposed Zoning Ordinance Amendment were mailed to all property owners within 300 feet of the property, according to the most recent assessor's roll, on October 2, 2018; and
6. The City finds that Pursuant to the California Environmental Quality Act, the proposed project will not have a significant

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

Section 1: The City Council of the City of Riverbank approves Rezoning 9.1± acres to the Planned Development zone district, located at APN 062-021-008.

Section 2: 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, 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 3: 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 13th day of November 2018; motioned by Councilmember _____, seconded by Council Member _____, and upon roll call was carried by the following vote ____:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Annabelle Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

**City of Riverbank
Planning Commission
Resolution No. 2018-007**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
RIVERBANK RECOMMENDING APPROVAL OF THE REQUEST OF
EDWARD TOUMA FOR TENTATIVE MAP 02-2017 TO SUBDIVIDE 1.1±
ACRES INTO 14 PLANNED DEVELOPMENT SINGLE FAMILY
RESIDENTIAL LOTS INCLUDING LOT A, LOCATED AT
SEVENTH AND SIERRA STREETS APN: 132-015-023**

WHEREAS, an application has been received from Edmund Shamass, with a proposal to subdivide approximately 1.1± acres into thirteen (13) single family lots, excluding Lot A, which allows for a net density of 16+ dwelling units per acre that is consistent with the General Plan Designation of the project site, High Density Residential (HDR); and

WHEREAS, the City Subdivision Ordinance, Section 152.037 states that as a condition of approval of a tentative map, the applicant 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 both – to review a proposed tot lot and barbeque area and 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 0.165 acres; and

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

WHEREAS, the proposed tentative map is consistent with the following General Plan policies discussed in the staff report: LAND-3.3, LAND-3.4, DESIGN-3.6, DESIGN-4.2, DESIGN-4.2, DESIGN 4.3, DESIGN-4.4, DESIGN-4.6, and ED-10.1; and

WHEREAS, Tentative Map 02-2017 (date stamped July 31, 2018) was reviewed by the Riverbank Planning Commission at a regular meeting held on October 16, 2018 in the manner prescribed by law; and

WHEREAS, The Riverbank Planning Commission recommends approval of the requested Tentative Map dated July 2018 prepared by Morris Engineering and Surveying Inc., and modified by adopted Conditions of Approval, and incorporated herein as a part of this Planning Commission Resolution; and

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

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

- C. The City finds that Pursuant to the California Environmental Quality Act, the proposed project will not have a significant effect on the environment and is categorically exempt under Article 19 Section 15332 (a-e) Class 32, In-Fill Development Projects.
- D. The approval of Tentative Map 02-2017 to divide parcel APN 062-021-008 of 1.1± acres into 13 single family lots, and Lot A will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood in that the project is similar to, and compatible with, neighboring uses in the area.

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

1. Applicant shall comply with the City of Riverbank Standard Conditions as contained in Planning Commission Resolution 2013-014 including annexing into Community Facilities District 2016-01, or receive confirmation from the Community Development Director that a specific condition or conditions does not apply to the subject project; and
2. The Applicant shall install improvements to the Sixth to Seventh Street Alley along the project's frontage to the standards and specification of the City of Riverbank. The Applicant is required to submit improvements plan to show said alley improvements; and
3. The units shall be deed restricted as "for sale" single family homes, and shall not be made available for rent by the developer; and
4. The project will need to conform to the City's storm drainage ordinance, Post Construction Standards manual, and low impact development requirements. The Project engineer proposes the storage and percolation of storm water beneath the Project's internal street; and
5. Three (3) sets of landscape and irrigation plans shall be prepared and submitted with fee for review and approval by the City's contract landscape architect. The tot lot shall be fully landscaped and contain playground equipment with shade structure, picnic tables, trash receptacles, and a barbeque area to the satisfaction of the Community Development Director; and
6. A Tree Survey shall be conducted and Tree Protection Plan provided (if required) before a grading permit can be issued; and
7. Applicant shall indicate how the existing 26" diameter Oak tree located near the southwest corner of the site will be protected and not harmed by the proposed CMU Wall; and
8. 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 0.165 acres; and
9. Lot A shall be maintained by a private Home Owner's Association (HOA); and
10. All wet utilities are to be cleaned, tested, and videotaped prior to acceptance by the City of Riverbank; and
11. Private street names shall be approved by City Council; and

12. An automatic fire system shall be provided for all Group R occupancies. **CFC 903.2.8**; and
13. 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
14. 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
15. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved area to turn around a fire apparatus in accordance with the California Fire Code. **CFC 503.2.5**; and
16. 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
17. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to the site. **CFC 507.1**; and
18. 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
19. All existing and proposed overhead utilities shall be installed underground on Seventh Street and within the subdivision; and
20. 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
21. All haul trucks transporting soil, sand, or other loose material off-site shall be covered; and
22. 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
23. 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
24. 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
25. 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
26. 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

27. 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 decedent 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. Implementation of Mitigation Measure CUL-1 would reduce the potential impact on human remains to a less than significant level; and
28. Pursuant to the 2005-2025 General Plan Policy SAFE-1.11, the proposed project requires a detailed Geotechnical Study prepared by an independent qualified geologist to be reviewed and approved by the City. The Geotechnical Study shall be submitted with the project Improvement Plans; and
29. 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-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
30. 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

31. 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 (dwelling and Riverbank High School).
- 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 (dwellings and Riverbank High School).
- 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; and

32. The approval of this map TM 02-2017 will invalidate the prior approval of the underlying Tentative Map approved in 2006 known as TM 01-2006.

NOW THEREFORE, BE IT RESOLVED by the City of Riverbank Planning Commission recommends for approval Tentative Map No. 02-2017 (Exhibit A), subject to these Conditions of Approval established by Resolution No. 2018-007 and to be recorded as modified.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 16th of October 2018, by the following vote 5-0:

AYES: Commissioners: Ball, Hughes, Stewart, Fenrich and Link

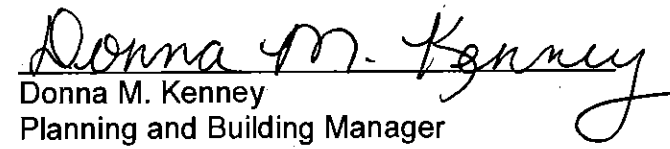
NOES: None

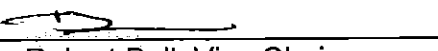
ABSENT: Commissioner Chair: Dinan

ABSTAIN: None

Attest:

Approved:


Donna M. Kenney
Planning and Building Manager


Robert Ball, Vice Chairperson
Planning Commission

Exhibits: A – Tentative Map 02-2017 date stamped July 31, 2018

-
- An aerial photograph of a neighborhood in California, likely Riverbank. The map shows a grid of streets including Orange Ave, Riverside Dr, High St, Topoka St, Stanislaus St, Sierra St, Front St, Iowa Ave, Karles Ave, Texas Ave, Arizona Ave, Nevada Ave, Dakota Ave, Talbot Ave, Turpin Ave, Ross Ave, Caliente Ave, and Central Ave. A red-outlined building is visible on the left side of the map, near the intersection of High St and Riverside Dr. The map also shows a river or canal running through the area, and a large industrial or commercial area on the right side. A scale bar at the bottom indicates distances in feet and miles.

NOT TO SCALE

OWNER/ APPLICANT:	EDMOND SHAMASS 615 13TH STREET MODESTO, CA 95354
SITE ADDRESS:	7TH STREET (x SIERRA STREET) RIVERBANK, CA 95367
ZONING:	R-2 DUPLEX RESIDENTIAL
GENERAL PLAN:	HDR HIGHER DENSITY RESIDENTIAL
TOTAL AREA:	1.17 AC.
WATER:	CITY OF RIVERBANK
SANITARY SEWER:	CITY OF RIVERBANK

BEING ALL OF LOT 2 AND A PORTION
OF LOT 3 AS SHOWN ON THE EASTERN
ADDITION TO THE TOWN OF RIVERBANK
FILED IN BOOK 7 OF MAPS AT PAGE 30,
STANISLAUS COUNTY RECORDS, SITUATE IN
THE NORTHEAST QUARTER OF SECTION 25,
T.2S., R.9E., M.D.M., CITY OF RIVERBANK,
STANISLAUS COUNTY, CALIFORNIA
SCALE: 1"=30' JULY 2018

SHEET 1 OF 1

18-125_Riverbank_Commons

October 15, 2018
City of Riverbank
6707 Third Street
Riverbank, CA 95367-2396
Donna Kenney, Building & planning manager. dkenney@riverbank.org

Donna Kenney, Planning Commission for City of Riverbank, and to whom it may concern,

This letter is being written regarding concerns over the Planned Development Rezone 01-2017, Architectural & Site Plan Review 02-2017, and Tentative Subdivision Map 01-2017 (Dept. File # 17-0015) – Edmund Shamass, applicant; Edward Touma, owner – Riverbank Commons at 7th and Sierra Streets, APN: 132-015-023.

My name is Kathy D. Hedman daughter of Barbara G. Trager homeowner at 6419 7th Street Riverbank, CA 95367. The home at 6419 7th Street has been in our family for over 70 years. I am writing on behalf of my mother as she does not have a computer or access to email and she does not think she will be able to attend the hearings due to her poor health. My mother wants her concerns made known and addressed. Listed below are our concerns.

Our main concerns regarding the above mentioned rezone & development project are the **impact it will have on the privacy, safety , and wellbeing of my mother Barbara Trager who is in poor health. The homes on lots 1 & 2 are two stories and will overlook into my mother's home.** In addition we are also concerned about the **increase in noise and additional traffic** the development will bring to 7th Street.

We are requesting the project not be approved due to the impact it will have on my mother's wellbeing. If the project is approved; we want the developer to be **required to place a masonry wall around the entire project at my mother's property line at the developer's expense between the development and 6419 7th Street so that there is absolutely no access from the development onto my mother's property. We would like the masonry wall to be placed at the beginning of the development stages to eliminate the hazard of possible fire damage to my mother's home as has occurred in the past. We request the development to be required to be completed in a timely manner due to the noise and stress the construction will create.** We are very concerned over the proposed road leading into the development being parallel to my mother's home as her guest bedroom, kitchen, & bathroom windows are on that side of the home. **The road will create noise, headlight beams, eliminate her privacy, and could potentially be a danger if a car went through a fence if it were not a masonry wall.** We also want to ensure that my mother will have no responsibility to maintain any masonry walls or fences that are built. We have concerns regarding the fence or wall placed at the back of the property line being tall enough due to the fact that my mother's property is higher than the land on the proposed project. We request the developer be required to bring the height of the property up to meet the height of the property at 6419 7th Street or build a taller wall to ensure privacy.

We are also concerned about the increase in traffic on 7th Street and where overflow parking for residents and their guests will be located. There are already cars parked along 7th Street and an increase in traffic will add to the existing problem. Presently neighbors & their guests park in front of 6419 7th Street; at times they leave cars parked for a couple of days and Barbara Trager has no place for her guests to park. This project if approved will eliminate several parking spaces along 7th Street. **Please consider how this project would affect you if you or your mother lived next door to this proposed project. The noise, traffic, & headlight beams coming into the bedroom, kitchen, & bathroom windows will eliminate my mother's privacy. Please reconsider your approval of this project!** If this project is approved we request the developer be required to complete the project in a timely manner by a due date so construction does not linger and cause my mother Barbara Trager further undue stress. We are strongly opposed to the construction of the development.

Respectfully,

Kathy Hedman & Barbara Trager

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 5.2

SECTION 5: PUBLIC HEARING

Meeting Date: January 8, 2019

Subject: First Reading By Title Only and Introduction of a Proposed **Ordinance** Amending Chapter 96: Trees of Title IX: General Regulations by Adding a New Section §96.20: Dangerous Trees, Mistletoe a Nuisance, to the Riverbank Code of Ordinances

From: Sean Scully, City Manager

Submitted by: Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that the City Council conduct the public hearing for the first reading of the proposed ordinance to consider its approval; if approved, the second reading of the ordinance by title only will be scheduled for the next regular City Council meeting on January 22, 2019, for consideration of its adoption.

BACKGROUND

Existing Chapter 96: Trees was updated and adopted in April 11, 2017. This ordinance regulates the planting and removal of trees within the City, both existing and in new subdivisions/projects. Information pertaining to dangerous trees including mistletoe was mistakenly removed during the update. The City must have a Code section on dangerous trees and mistletoe removal in order to abate them.

ANALYSIS

The purpose of the draft Ordinance (Attachment 1) is to regulate “Street Trees” within the City. Street Trees means all trees planted or growing within public rights-of-way, public easements, streets, parking strips, roads and ways within the City. The ordinance also would regulate mistletoe on trees within private property. The locations herein referred to shall be known as “street tree areas.”

Language to be added is underlined below and redlined in Attachment 2:

96.20 Dangerous Trees, Mistletoe a Nuisance

A. Any tree or shrub growing in a street tree area or public place which is endangering or which in any way may endanger the security or usefulness of any public street, sidewalk or other public place or the full and safe operation of public utility wires, is

hereby declared to be nuisance, and the City Manager may cause the same to be trimmed or removed. In the case of any such trees or shrubs in the private property portion of the street tree area, the City Manager shall notify the owner, or his duly authorized agent, in writing that such tree or shrub is a nuisance and should be trimmed or removed. Failure of the property owner or his duly authorized agent to remove or trim such tree or shrub within 30 days after receipt of the notice by the Manager shall be a violation of this chapter, and the Manager, may then remove or trim the tree or shrub and assess the cost against the property owner.

B. Mistletoe growing in any tree in the City is hereby declared to be a nuisance. The Manager may cause mistletoe growing in any tree in the street tree areas to be removed. In the case of mistletoe growing on trees on private property portion of the street tree area, the Manager, or their duly authorized representative, shall notify the owner, or their duly authorized agent, in writing that such mistletoe is a nuisance and should be removed. Failure of the property owner to remove or to have such mistletoe removed within 35 days from the date of the notice shall be in violation of this chapter and the City Manager may then remove, or cause to be removed such mistletoe and the cost of removal shall be assessed against the property owner.

In summary, the proposed Ordinance replaces language to Chapter 96: Trees that had been mistakenly removed. It also specifies when the dangerous trees can be removed without a permit. This includes requirements of either the City or Private Property Owner to remove dangerous trees or trees which contain mistletoe, considered a nuisance.

ENVIRONMENTAL DETERMINATION

The amendment to the City of Riverbank Municipal Code is exempt from environmental review because it is not a project within the meaning of Section 15378 of the State CEQA Guidelines.

STRATEGIC PLAN

The City of Riverbank Strategic Planning Session is a plan and set of goals that Riverbank will work towards for the next three (3) years. The approval of an amendment to regulate skate ramps is not a stated strategic goal but is consistent with the General Plan goal to “To be recognized as a premier community where individuals, families and businesses thrive in a safe and beautiful environment.”

FINANCIAL IMPACT

The total financial impact is difficult to quantify but the City of Riverbank spends funds regularly to abate mistletoe which

PUBLIC NOTICE

The public hearing notice was published in the Riverbank News on December 26, 2018. It was also posted at City Hall North, South, the post office, Community Center, and sent to the library on December 20, 2018.

ATTACHMENTS

Attachment 1 - Draft City Council Ordinance No. 2019-XXX

Attachment 2 - RMC Chapter 96 redlined

CITY OF RIVERBANK

ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AMENDING CHAPTER 96: TREES OF TITLE IX: GENERAL REGULATIONS BY ADDING A NEW SECTION 96.20: DANGEROUS TREES, MISTLETOE A NUISANCE, TO THE CITY OF RIVERBANK CODE OF ORDINANCES

WHEREAS, The City of Riverbank has an adopted Street Tree List to permit specific trees within the City; and

WHEREAS, the proposed Ordinance amendment adds language to Chapter 96 to add regulations and clarify requirements related to the removal of dangerous trees within the City; and

WHEREAS, the City Council reviewed and considered, pursuant to the California Environmental Quality Act (CEQA), the proposed ordinance amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15061, under the General Rule that CEQA applies only to projects, which have the potential for causing significant effect on the environment.

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

SECTION 1: Amending Chapter 96: Trees of Title IX: General Regulations of the Riverbank Municipal Code by adding Section 96.20, which shall read as follows:

CHAPTER 96: TREES

Sections:

- 96.01 Title.
- 96.02 Definitions.
- 96.03 Street tree plan.
- 96.04 Plan administration.
- 96.05 Authority of City Manager.
- 96.06 Planting generally.
- 96.07 Permits required.
- 96.08 Abusing or mutilating trees prohibited.
- 96.09 Open ground maintenance.
- 96.10 Interference prohibited.
- 96.11 Building construction necessitating altering or removing tree; permit and deposit required.

- 96.12 Private tree maintenance; failure a nuisance; notice.
- 96.13 Planting in new subdivisions; plan and deposit submission.
- 96.14 Emergency situations; public utilities may trim without permit.
- 96.15 Changing the variety of approved trees; procedure.
- 96.16 Liability of property owner.
- 96.17 Responsibility of property owner or occupant.
- 96.18 Appeal for decision.
- 96.19 Penalty for violations; civil action.
- 96.20 Dangerous Trees, Mistletoe a Nuisance

Cross Reference:

Oak and landmark tree preservation, see Ch. 156

[...]

§ 96.20 DANGEROUS TREES, MISTLETOE A NUISANCE

(A) Any tree or shrub growing in a street tree area or public place which is endangering or which in any way may endanger the security or usefulness of any public street, sidewalk or other public place or the full and safe operation of public utility wires, is hereby declared to be a nuisance, and the City Manager may cause the same to be trimmed or removed. In the case of any such trees or shrubs in the private property portion of the street tree area, the City Manager shall notify the owner, or the duly authorized agent, in writing that such tree or shrub is a nuisance and should be trimmed or removed. Failure of the property owner or his duly authorized agent to remove or trim such tree or shrub within 30 days after receipt of the notice by the Manager shall be a violation of this chapter, and the Manager, may then remove or trim the tree or shrub and assess the cost against the property owner.

(B) Mistletoe growing in any tree in the City is hereby declared to be a nuisance. The Manager may cause mistletoe growing in any tree in the street tree areas to be removed. In the case of mistletoe growing on trees on private property portion of the street tree area, the Manager, or their duly authorized representative, shall notify the owner, or their duly authorized agent, in writing that such mistletoe is a nuisance and should be removed. Failure of the property owner to remove or to have such mistletoe removed, within 35 days from the date of the notice shall be in violation of this chapter and the City Manager may then remove, or cause to be removed such mistletoe and the cost of removal shall be assessed against the property owner.

SECTION 2: This Ordinance shall become effective thirty (30) days from and after its final passage (), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on January 8, 2019. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the ____ day of January, 2019; motioned by Councilmember _____, seconded by Councilmember _____, and moved said ordinance by a City Council roll call vote of ____:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST

APPROVED

Annabelle H. Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

APPROVED AS TO FORM:

Tom P. Hallinan, City Attorney

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.1

SECTION 6: NEW BUSINESS

Meeting Date:	January 8, 2019
Subject:	Neighborhood Improvement Officer I Half-time Position Review
From:	Sean Scully, City Manager
Submitted by:	Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

Staff recommends that the City Council listen to the presentation and extend the half-time position for an additional three (3) months or dictate an alternative timeline.

BACKGROUND SUMMARY

On June 12, 2018 the City Council passed Resolution 2018-040 to create a half-time Neighborhood Improvement Officer I position to issue Administrative Cannabis Permits and abate abandoned vehicles throughout the City. Staff was directed to report back to Council with an update on the position three (3) months after hiring the half-time employee.

ANALYSIS:

In order to implement the City's Administrative Cannabis Permit ("ACP") process on residential properties and abate abandoned vehicles ("AVA"), staff asked to recruit for and fill a half-time Neighborhood Improvement Officer I ("NIO") position to process these permits and provide health and safety inspections of cannabis sites throughout the City. The Inspector was to participate in the abatement of residential and commercial cannabis activities that were operating without permits; there were two citizens growing cannabis in the City without ACP permits at that time. In addition, the Inspector was expected to abate abandoned vehicles on City streets and on private property. The City conducted a recruitment and the new half-time NIO employee began his employment on October 1, 2018 at 19 hours per week.

Over the past three (3) months, no one has come in to apply for an ACP. The two citizens who were growing cannabis outdoors at their residences pulled out their plants after being contacted by the City and their landlords. In addition to the implementation of the ACP and AVA programs, the half-time NIO has been able to assist the full-time NIO with other code enforcement actions in the City such as trash and weed complaints, and zoning violations such as jet skis and RVs parked on front lawns.

The half-time NIO has been busy abating vehicles from which the City can expect payments through the Stanislaus County Service Authority Abandoned Vehicle Abatement Program ("SCSAAVAP"). The half-time employee has also been attending local training sessions with the full-time NIO employee, increasing his knowledge base and abatement skills. Twenty-four (24) vehicles have been abated and towed in this three (3) month time period.

FINANCIAL IMPACT:

Since it was unclear at the time of position creation on the amount of funding the City would receive due to ACP and AVA activities, staff was asked to evaluate the workload and adjust the NIO's hours if necessary at three (3) months to ensure the position is budget neutral and paid for by these programs.

The funding source for the half-time NIO position was based on the following information:

- The ACP fee is \$120 per year with a \$50 reinspection fee if necessary (none have applied for an ACP).
- The current SCSAAVAP quarterly payment to the City is approximately \$1,065 per abated vehicle. (The 24 abated vehicles - 10 on public property and 14 on private property - should provide close to \$25,000 of funding to the City for the quarter).

The top step of the Neighborhood Improvement Officer I range is currently \$51,598.56/year or \$25,799.28/year if used for a half-time position (see chart below):

56	Neighborhood Improvement Officer I	Hourly	20.41	21.43	22.50	23.63	24.81
		Bi-Weekly	1,632.70	1,714.33	1,800.05	1,890.06	1,984.56
		Monthly	3,537.51	3,714.39	3,900.11	4,095.12	4,299.88
		Annual	42,450.12	44,572.68	46,801.32	49,141.44	51,598.56

There is currently no NIO half-time salary range that has been adopted by Council. As a half-time position, the employee is not represented by a union, is not eligible for automatic step increases, and is not eligible for any negotiated Cost of Living Adjustments. However, the City has had the past practice of awarding merit increases for half-time employees who go beyond the City's expectations. In the past, the City has only been

able to abate 1-2 abandoned vehicles per quarter. The employee will continue to work 19 hours per week if an extension is granted.

STRATEGIC GOALS

The City of Riverbank Strategic Planning Session is a plan and set of goals that Riverbank will work towards for the next three years. The presentation to the City Council of the need for Code Enforcement personnel to conduct cannabis oversight is a specific objective. It is consistent with the established General Plan goal to Enhance Public Safety as part of the City's Vision "To be recognized as a premier community where individuals, families and businesses thrive in a safe and beautiful environment."

ATTACHMENTS

None.

CITY OF RIVERBANK

RESOLUTION NO. 2018-040

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA,
AUTHORIZING THE CITY MANAGER TO RECRUIT AND FILL A HALF-TIME
NEIGHBORHOOD IMPROVEMENT OFFICER I (ONE) POSITION**

WHEREAS, the implementation of Ordinance No. 2017-007 which regulates numerous land use issues related to personal and commercial cannabis activities within the City formed the basis for a review of the operational needs in the Development Services Department; and

WHEREAS, after further review of the needs of the department, it has been determined that there is a necessity to fill an existing job classification in order to best meet the needs of the City's evolving Development Services Department; and

WHEREAS, the existing job classification of Neighborhood Improvement Officer I has a salary range as follows:

<u>Job Classification</u>	<u>Range Salary (Monthly)</u>
Neighborhood Improvement Officer I 56	\$3,537.51-\$4,299.88
(Half-time position)	\$1,768.75-\$2,149.94)

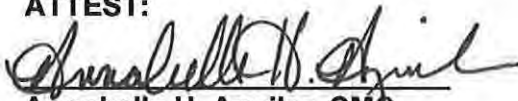
WHEREAS, the Stanislaus County Service Authority Abandoned Vehicle Abatement Program ("SCSAAVAP") and Public Benefit funds from commercial cannabis development agreements may cover the salary and benefit costs of this position.

NOW, THEREFORE, be it resolved that the City Council of the City of Riverbank does hereby approve and authorize the City Manager to recruit and fill a Neighborhood Improvement Officer I position.

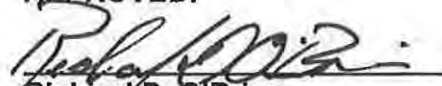
PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 12th day of June, 2018; motioned by Vice Mayor Darlene Barber-Martinez (CM-D4), seconded by Councilmember District 2 Cindy Fosi, and upon roll call was carried by the following City Council vote of 5-0:

AYES: Fosi, Campbell, Jones Cruz, Barber-Martinez, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAINED: None

ATTEST:


Annabelle H. Aguilar, CMC
City Clerk

APPROVED:


Richard D. O'Brien
Mayor

Attachment: Position Classification for Code Enforcement Office I

CITY OF RIVERBANK
NEIGHBORHOOD IMPROVEMENT OFFICER I/II

Class specifications are only intended to present a descriptive summary of the range of duties and responsibilities associated with specified positions. Therefore, specifications may not include all duties performed by individuals within a classification. In addition, specifications are intended to outline the minimum qualifications necessary for entry into the class and do not necessarily convey the qualifications of incumbents within the position.

DEFINITION:

Under general supervision, learns to inspect and inspects residential, commercial and industrial properties, and transient businesses to determine compliance with applicable federal, state, and local codes, laws, regulations, and ordinances relating to maintenance of properties and structures and business licensing; initiates enforcement action and issues citations and notices; performs other related duties as required.

DISTINGUISHING CHARACTERISTICS:

Neighborhood Improvement Officer I

The **Neighborhood Improvement Officer I** is the entry-level class in the Neighborhood Improvement Officer series that allows the incumbent to develop journey level knowledge and abilities. Initially, under immediate supervision, incumbents perform the more routine and less complex assignments within an established procedural framework, where there are minimal consequences of error, including a wide variety of code, law, regulation, and ordinance enforcement. This classification is distinguished from the next higher level classification of Neighborhood Improvement Officer II by the performance of work requiring a lesser degree of code interpretation and judgment.

Neighborhood Improvement Officer II

The **Neighborhood Improvement Officer II** is the journey level class in the Neighborhood Improvement Officer series in which incumbents are expected to independently perform the full scope of assigned Neighborhood Improvement duties. Incumbents are responsible for performing the full range of inspection and Neighborhood Improvement responsibilities involving codes and regulations in a broad range of areas, including zoning, building, housing, vehicle abatement, health, and safety. The work requires independence and discretion in working with the public and in conducting field inspections and involves a proactive implementation of applicable codes and regulations. This class is distinguished from the next higher classification of Building Official in that the latter has overall management responsibility for the Building Division.

SUPERVISION RECEIVED/EXERCISED:

Neighborhood Improvement Officer I

Receives immediate supervision from the Building Official. Incumbents in this class do not routinely exercise supervision.

Neighborhood Improvement Officer II

Receives general supervision from the Building Official. May exercise functional and technical supervision over Neighborhood Improvement Officer I and office personnel.

ESSENTIAL FUNCTIONS: *(include but are not limited to the following)*

- Learns to perform and performs the full array of residential, commercial and industrial properties, and transient businesses inspections; enforces codes and ordinances such as property maintenance, graffiti removal, housing, nuisance abatement, property management, zoning, signs, noise, business licenses, abandoned vehicle abatement, and other regulations and ordinances; determines existence and type of code violation; compiles, analyzes, and evaluates findings of investigations and inspections; researches property ownership; coordinates with property owners or their representatives and other regulatory agencies to take corrective action; performs follow-up inspections and investigation as required; ensures compliance with all applicable municipal codes and regulations; issues citations for noncompliance; issues stop work orders and refer them to the proper department if necessary.
- Interprets, applies, and explains applicable municipal codes, zoning ordinances, vehicle codes, state housing, health and safety codes, and other related laws, codes, and regulations to the public, departmental staff, and other agencies; advises property owners on the requirements for compliance; explains processes and procedures for obtaining compliance or appropriate permits, including reinspection on applicable permits and notices until compliance is attained.
- Maintains clear, concise, and comprehensive records and reports related to enforcement activities; maintains daily log of contacts or inspections for code enforcement cases; enters and retrieves information from records systems.
- Photographs violations; gathers evidence and prepares cases for court proceedings; produces photographs and records of violations for evidence; files criminal complaints in court when necessary with supervisor's approval.
- Responds to questions and concerns from the public, departmental staff, and other agencies; provides information as appropriate and resolves service issues and complaints; cooperates with other agencies.
- Assists at the front counter; answers questions regarding code enforcement, planning, building, or public information as necessary.
- Prepares a variety of reports and correspondence, including notices of violations and follow-up letters; attends various meetings and training seminars; responds to emergency situations as required.
- Establishes positive working relationships with representatives of community organizations, state/local agencies, City management and staff, and the public.

PHYSICAL, MENTAL, AND ENVIRONMENTAL WORKING CONDITIONS:

Position requires sitting, standing, walking on level and slippery surfaces, reaching, twisting, turning, kneeling, bending, stooping, squatting, crouching, grasping, and making repetitive hand movement in the performance of daily duties. The position also requires both near and far vision when making inspections, reading written reports, and work related documents. Acute hearing is required when providing phone and personal service. The need to lift, carry, and push tools, equipment, and supplies weighing 25 pounds or more is also required. Additionally, the incumbent in this outdoor position works in all weather conditions, including wet, hot, and cold. Incumbents may frequently deal with irate

members of the public. The nature of the work also requires the incumbent to drive motorized vehicles, work in heavy vehicle traffic conditions, and often work with constant interruptions. Some of these requirements may be accommodated for otherwise qualified individuals requiring and requesting such accommodations.

QUALIFICATIONS: *(The following are minimal qualifications necessary for entry into the classification.)*

Education and/or Experience:

Any combination of education and experience that has provided the knowledge, skills, and abilities necessary for a **Neighborhood Improvement Officer I/II**. A typical way of obtaining the required qualifications is to possess the equivalent of:

Neighborhood Improvement Officer I

One year of experience in the enforcement of codes in the areas of building, business licensing, and construction, and a high school diploma or equivalent.

Neighborhood Improvement Officer II

In addition to the above, one year of experience equivalent to that of a Neighborhood Improvement Officer I with the City of Riverbank.

License/Certificate:

Neighborhood Improvement Officer I

Possession of, or ability to obtain, a valid Class C California driver's license. Possession of a PC 832 within one year of appointment is highly desirable.

Neighborhood Improvement Officer II

Possession of, or ability to obtain, a valid Class C California driver's license. Possession of a PC 832 within six months of appointment. Possession of, or ability to obtain, an ICC Housing and Property Maintenance or ICC Zoning certification within six months of appointment.

KNOWLEDGE/ABILITIES/SKILLS: *(The following are a representative sample of the KAS's necessary to perform essential duties of the position. The level and scope of the knowledge and abilities listed below vary between the I and II levels.)*

Knowledge of:

Modern principles, practices, and methods used in the enforcement of a variety of codes, laws, regulations, permits, and ordinances, including housing codes, business license codes, fire codes, and health laws; methods and techniques used in enforcement and investigation; law enforcement procedures and administrative techniques; rules of evidence and court procedures; basic principles of mathematics; applicable federal, state, and local laws, codes, ordinances and regulations; methods and techniques of scheduling work assignments; standard office procedures, practices, and equipment; modern office equipment, including a computer and applicable software; methods and techniques for record keeping and report preparation and writing; proper English, spelling, and grammar; occupational hazards and standard safety practices.

Ability to:

Inspect and analyze a variety of buildings and properties and identify code violations; appropriately apply codes and regulations to varying situations; effectively deal with angry and noncooperative people; keep up with constantly changing laws, codes, ordinances, and regulations; learn more complex principles, practices, techniques, and regulations pertaining to assigned duties; facilitate appropriate corrective action from property owners regarding violations; perform mathematical calculations quickly and accurately; implement, explain, and apply applicable laws, codes, and regulations; read, interpret, and record data accurately; organize, prioritize, and follow-up on work assignments; work independently and as part of a team; make sound decisions within established guidelines; analyze a complex issue and develop and implement an appropriate response; follow written and oral directions; observe safety principles and work in a safe manner; communicate clearly and concisely, both orally and in writing; establish and maintain effective working relationships.

Skill to:

Operate an office computer and a variety of word processing and software applications.

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.2

SECTION 6: NEW BUSINESS

Meeting Date:	January 8, 2019
Subject:	Annual Compliance Review of the Development Agreement (01-2017) between the City of Riverbank and PACAFI Cooperative, Inc., a California Cooperative Corporation doing business as “Flavors”
From:	Sean Scully, City Manager
Submitted by:	Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

Find the applicant(s) in compliance with the Development Agreement for the time period of January 1, 2018 to January 1, 2019.

SUMMARY

On January 09, 2018 the City of Riverbank City Council approved a Development Agreement (“DA”) between the City of Riverbank and PACAFI COOPERATIVE, INC., a California Cooperative Corporation doing business as ‘Flavors’. The Development Agreement requires the City to evaluate compliance annually. This report to the City Council concludes that Flavors is in general compliance with the Development Agreement in the 2018 review period and recommends the City Council find Flavors in compliance.

BACKGROUND AND ANALYSIS

A three (3) year Development Agreement for Flavors was originally approved on January 09, 2018 to conduct a commercial cannabis retail dispensary on the site. California Government Code Section 65865.1 states that a DA shall include provisions requiring periodic review at least every twelve (12) months at which time the applicant is required to demonstrate good faith compliance with the terms of the agreement. If an applicant is not in compliance, the local agency may terminate or modify the agreement.

Following Tenant Improvements at the site, the dispensary opened in April of 2018. Throughout the 2018 calendar year there were no amendments made to the Development Agreement and required documents such as insurance certificates have been submitted.

During the entitlement process the following potential concerns with the project came to light from public comment:

1. Traffic related issues relating to ingress/egress of the site.
2. Exposure of citizens and children to cannabis related products.
3. Increase of crime to the area.
4. Decrease in property values to the area.
5. Exposure to cannabis odor to the area.

Of the concerns above staff will provide a general analysis of each concern, which is presented below:

1. Traffic related issues relating to ingress/egress of the site. *Staff has continued to monitor traffic around the site on varied days and times, including weekends, and has not observed significant traffic impacts at this time.*
2. Exposure of citizens and children to cannabis related products. *Staff has not received any complaints regarding citizens or children exposed to cannabis related products on the Flavors property.*
3. Increase of crime to the area. *Per consultation with Police Chief Kiely there was no increase in crime in the area that can be attributed to Flavors. Of the actual calls for service to this location, two (2) were false panic/robbery alarms where Deputies determined all was secure and they were accidental trips. Another call was a call where a person called dispatch to report that a light flashing at the business was blinking at such a high rate of speed that it was going to cause a traffic accident or cause someone to have a seizure (neither happened). The responding Deputy spoke with management, the light appeared to be malfunctioning, but regardless was NOT a public safety hazard and was fixed.*

There was also one call from a neighboring business which reported an adult male (who had just come from Flavors) was loitering in the neighboring business parking lot. He was gone when Deputies arrived. Finally, in a related incident, a vehicle burglary occurred at the Chevron gas pumps in Crossroads Shopping Center where a vendor that was going to deliver to Flavors had cash stolen from his delivery van when he left it unattended and went inside Chevron. Overall,

police activity levels are consistent with police activity levels prior to the business opening.

In addition, a citizen had complained about Flavors employees parking regularly on her street. Staff conducted multiple site visits and did not find any Flavors vehicles or traffic congestion in the area.

4. Decrease in property values to the area. *Per examination on Zillow.com of homes for sale or recently sold in the direct vicinity of the Flavors property there has not been a decrease in property values.*
5. Exposure to cannabis odor to the area. *City staff has not received any complaints regarding cannabis odor in the direct vicinity of the project.*

ENVIRONMENTAL DETERMINATION

This Development Agreement annual review is not a project as defined in the CEQA Guidelines Section 15378, therefore, no further action is required and none of the conditions of the CEQA Guidelines Section 15162 requiring additional environment review exist.

PUBLIC NOTICE

No Public Notice is required for an annual review.

FISCAL IMPACT

Flavors is deemed in compliance with Section 4.2 of the Development Agreement. Flavors has paid a public benefit fee each month of the 2018 calendar year they were in business. This resulted in a total of \$340,370.62 as of January 1, 2019, which was deposited into the City's Public Benefit Fund. The Flavors project has resulted in a positive impact on the City's fiscal resources.

STRATEGIC GOALS

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

ATTACHMENTS

1. Signed and Recorded Flavors Development Agreement, dated December 12, 2017.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:

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

Stanislaus, County Recorder
Lee Lundrigan Co Recorder Office
DOC- 2018-0004794-00
Thursday, JAN 25, 2018 08:18:48
Ttl Pd \$0.00 Rcpt # 0004076875
OJC/R2/1-66

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 12th day of December, 2017, by and between the **CITY OF RIVERBANK**, a California municipal corporation ("City") and **PACAFI COOPERATIVE, INC.**, a California cooperative corporation doing business as **FLAVORS** ("Developer"). City and Developer may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

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

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DEVELOPMENT AGREEMENT
CITY OF RIVERBANK
& PACAFI COOPERATIVE, INC. DBA FLAVORS
Page 1 of 66

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- D. Developer proposes to improve, develop, and use real property to operate a medicinal Cannabis Dispensary, in strict accordance with California Cannabis Laws, and the Municipal Code of the City of Riverbank, as each may be amended from time to time (the "Project").
- E. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 *et seq.* (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.
- F. Consistent with the requirements of the Development Agreement Statute, City has adopted Resolution No. 99-39 ("City Development Agreement Resolution") authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City.
- G. The City Development Agreement Resolution requires a written application with specified data to be submitted to the City for consideration of any development agreement.
- H. Developer submitted an application to the City for consideration of a development agreement for the Project.
- I. Developer leases that certain real property located at 2213 Patterson Road in the City of Riverbank, County of Stanislaus, State of California, Assessor's Parcel Number 075-026-044, of which Developer intend to improve approximately seven thousand six hundred and sixty-eight (7,668) square feet of space (the "Site"), more particularly described in the legal description attached hereto as **Exhibit A** and the Site Map attached hereto as **Exhibit B**.
- J. Government Code section 65865 requires that an applicant for a development agreement hold a legal or equitable interest in the real property that is the subject of the development agreement.
- K. Developer has leased the Site for the purpose of operating the Project. A copy of the lease is attached hereto as **Exhibit C**, within satisfaction of the requirement of Riverbank Municipal Code Chapter 120. The legal owner of the Site is aware of, and agrees to, the operation of the Project upon the Site.
- L. On November 20, 2017, the Riverbank Planning Commission ("Planning Commission") adopted Resolution No. 2017-025 recommending the Riverbank City Council ("City Council") adopt an ordinance establishing zoning limitations and requirements for all cannabis businesses.

- M. On August 22, 2017, the City Council adopted Ordinance No. 2017-007 to revise Riverbank Municipal Code 120 to establish a Cannabis Business Pilot Program to regulate all cannabis businesses within the City.
- N. Government Code section 65867.5 and the City Development Agreement Resolution requires the Planning Commission hold a public hearing to review an application for a development agreement.
- O. On November 21, 2017, the Planning Commission, in a duly noticed and conducted public hearing, considered Developer's application for this Agreement.
- P. On November 21, 2017, the Planning Commission recommended the City Council adopt Ordinance No. 2018-001, which would allow Developer to operate the Project at the Site.
- Q. On December 12, 2017, pursuant to Government Code section 65867.5 and the City Development Agreement Resolution, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 2018-001.
- R. This Agreement is entered into pursuant to the Development Agreement Statute and the City Development Agreement Resolution.
- S. City and Developer desire to enter into this Agreement to (i) facilitate the orderly development of the Site; (ii) create a physical environment that is consistent with and complements City's goals and visions; (iii) protect natural resources from adverse impacts; (iv) improve, upgrade, and create additional community facilities and infrastructure, enhance services, and assist in implementing the goals of the General Plan; and (vi) reduce the economic risk of development of the Site to both City and Developer.
- T. The Parties intend through this Agreement to allow Developer to develop and operate the Project in accordance with the terms of this Agreement.
- U. The City Council has determined that this Agreement is consistent with City's General Plan and have conducted all necessary proceedings in accordance with Riverbank Municipal Code for the approval of this Agreement.

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

AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

(k) "California Cannabis Laws" includes AUMA, MAUCRSA, CUA, the Medical Marijuana Program Act of 2004 codified as Health and Safety Code sections 11362.7 through 11628.3, and any other applicable laws that may be enacted or approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

(y) "Developer" means Pacafi Cooperative, Inc. doing business as Flavors. Developer also has the meaning set forth in Section 6.1.

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

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

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

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as "gross receipts";

3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchasers upon rescission of a contract of sale as is refunded either in cash or by credit;
5. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling period exceeds one (1) calendar year to comply with federal or state law.

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

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

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

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

Section 1.11. Funding Agreement for Processing Costs. Developer has deposited Thirty Thousand Dollars (\$30,000) with City to pay for the Application, all actual fees and expenses incurred by City that are related to the preparation and processing of this Agreement, including recording fees, publishing fees, staff time, consultant and attorney fees and costs (collectively, "Processing Costs"), and the first installment of the Public Benefit. The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

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

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

ARTICLE 2 DEVELOPMENT OF PROPERTY

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

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

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

Type 10	Retailer
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Developer shall be permitted to use the Site consistent with the Authorized License for the Term of this Agreement and during the time Developer is applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer is required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer, Developer shall immediately cease Commercial Cannabis Activity on the Site. Developer shall also, within thirty (30) calendar days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State of California, Developer shall immediately cease operations. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

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

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

associated with implementation of the Cannabis Business Pilot Program or Developer's obligation to strictly comply with the same.

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

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

Section 2.7. Initiatives and Referenda. If any City ordinance, rule or regulation, or addition to the Riverbank Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer in this Agreement, such Riverbank Municipal Code changes shall not be applied to the Site or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

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

Section 2.9. Developer's Right to Rebuild. Developer may renovate portions of the Site any time within the Term of this Agreement consistent with the Riverbank Municipal

Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

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

Section 2.11. Changes Mandated by Federal or State Law. The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Riverbank Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Cannabis Business Pilot Program. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Riverbank Municipal Code or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Developer will attempt to preserve the terms of this Agreement and the rights of Developer derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

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

ARTICLE 3

ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS

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

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

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

Section 3.4. Further Consistent Discretionary Actions. The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder or compromise development or use of the Site as contemplated by the Parties in this Agreement.

ARTICLE 4

PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT

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

Section 4.2. Public Benefit.

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefits upon Developer that will place burdens upon City infrastructure,

services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that commensurate with the private benefits conferred on Developer (the "Public Benefit"). In consideration of the foregoing, Developer shall remit to City as follows:

Effective Date	No Public Benefit Due.
First (1 st) Business Day of 1 st Month Following Issuance of the Conditional Use Permit.	\$10,000 or 5% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 1 Amount</u> ").
1 st Business Day of the Seventh (7 th) Month Following Issuance of the Conditional Use Permit.	\$15,000 or 5% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 2 Amount</u> ").
1 st Business Day of the Thirteenth (13 th) Month Following Issuance of the Conditional Use Permit Through the End of the Term.	\$18,000 or 5% of Gross Receipts from Operations each month, whichever is greater (" <u>Tier 3 Amount</u> ").

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

(c) Developer shall file an applicable statement that complies with the California State Board of Equalization, California Department of Tax and Fee Administration, or either's successor agency (the "State Taxing Authority") for sales tax purposes showing the true and correct amount of Gross Receipts from Operations of the Project during the applicable time period. Developer shall provide a copy of such statement to City upon request by City.

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

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

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

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

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

Section 4.7. Protections from City Tax. Notwithstanding Section 4.2, for the Term of this Agreement, Developer shall be exempt from any City tax, including a business license tax, on commercial cannabis businesses. Notwithstanding the foregoing, Developer and the Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Stanislaus, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event the Public Benefit Amount is invalidated for any reason, Developer shall be subject to any applicable tax on commercial cannabis businesses from the start date of such invalidation through the remaining Term of this Agreement.

ARTICLE 5 PUBLIC FACILITIES, SERVICES, AND UTILITIES

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

ARTICLE 6 INSURANCE AND INDEMNITY

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

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

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

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

(iii) Contain standard separation of insured provisions.

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

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

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

(iii) Contain standard separation of insured provisions.

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

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

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

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

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

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

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

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

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

Section 6.5. Waiver of Damages. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been exposed to liability for damages from Developer and, therefore, Developer hereby waive all claims for damages against City for breach of this Agreement.

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

ARTICLE 7 MORTGAGEE PROTECTION

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

ARTICLE 8 DEFAULT

Section 8.1. General Provisions.

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

(b) After expiration of the ten (10) calendar day period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within ten (10) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement, give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole

discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit related to or concerning the Project.

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

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional five (5) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

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

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

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

Section 8.3. Estoppel Certificates.

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

(b) At Developer's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full force and effect, that there are no uncured breaches or defaults in Developer's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

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

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

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

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

ARTICLE 9 TERMINATION

Section 9.1. Termination Upon Completion of Development. This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice

of such termination in substantial conformance with the "Notice of Termination" attached hereto as **Exhibit F**, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer's Obligations. Termination of this Agreement shall eliminate any further obligation of Developer to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

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

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

ARTICLE 10 OTHER GENERAL PROVISIONS

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

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

Section 10.3. Notices. Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. 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 (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) 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, California 95367
Attention: City Manager

and

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

If to Developer:

PACAFI COOPERATIVE, Inc. DBA Flavors
1142 Angie Avenue
Modesto, CA 95351

If to Developer:

n/a

Section 10.4. Governing Law and Binding Arbitration. The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California. Any dispute, claim, or controversy arising out of or

relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Sacramento, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Proceedings of the Judicial Arbitration and Mediation Services. Judgment on the award may be entered in any court having jurisdiction thereof.

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

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

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

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

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

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

Section 10.11. Standard Terms and Conditions.

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

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

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

(d) **Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or

representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

"CITY"

Date: January 17, 2018

CITY OF RIVERBANK, CA
a California Municipal Corporation

By: 

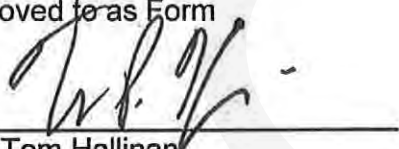
Sean Scully
City Manager

Attest:

By: 

Annabelle Aguilar
City Clerk

Approved to as Form

By: 

Tom Hallinan
City Attorney

"DEVELOPER"

Date: JAN 17, 2018

PACAFI COOPERATIVE, INC. DBA
FLAVORS, a California cooperative
corporation

By: 

Its: Devin Stetler, Developer

California All-Purpose Acknowledgment

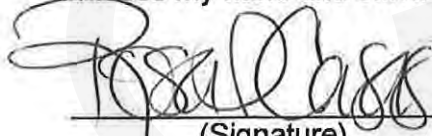
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Stanislaus)

On Jan. 17, 2018, before me Rosa I Casas, a Notary Public, personally appeared Devin Lloyd Stetter who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is)are subscribed to the within instrument and acknowledged to me that (he)she/they executed the same in (his)her/their authorized capacity(ies), and that by (his)her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.


(Signature)



(Seal)

California All-Purpose Acknowledgment

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

State of California)

County of Stanislaus)

On Jan. 17, 2018, before me Rosa I Casas, a Notary Public, personally appeared Sean Scully who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

Rosa I Casas
(Signature)



(Seal)

EXHIBIT A

The land referred to is situated in the County of Stanislaus, City of Riverbank, State of California, and is described as follows:

Parcel 2 of that certain Parcel Map recorded August 14, 1998, in Book 48 of Parcel Maps, at Page 96 of Official Records.

APN: 075-026-044-000

+



RIVERBLANK CALIFORNIA

1 SITE PLAN
2 BUILDING FLOOR PLAN
3 MEADOWS PLAN

[illegible]

BEING PARCEL 2 AS SHOWN ON THE MAP FILED AS BOOK 48 OF PARCELS, MAPS,
PLATS & INSTRUMENTS COUNTY RECORDS AND BEING WITHIN THE (EASTWEST) QUARTER
OF THE (NORTHEAST) QUARTER OF SECTION 20, TOWNSHIP 4 NORTH RANGE 4 EAST,
MOUNT SHILOH BASIN & WILSON, CITY OF HUNTINGTON, CALIFORNIA.

LISTING FIRE HYDRANT
 LISTING STREET LIGHT
 LISTING DRAIN LINE (UNDER 4" DIA. SIZES)
 LISTING DRAINAGE
 LISTING GROUND WATER AND SEWER
 LISTING POWER POLE (BY OVERHEAD LINES)
 LISTING AC CONDUITING
 LISTING SILVER CLEAN OUT
 LISTING (ALL BY 12" FROM CURB)

TESTING PUMPING LOGS



BENCHMARK ENGINEERING, INC.
CIVIL ENGINEERING & LAND SURVEYING
515 1TH STREET, MOORESTOWN, CALIFORNIA 91364
(714) 514-8000 FAX (714) 514-8005



SITE PLAN

DATE	1990
TIME	00:00
DAY	
WED	
LOC	STATION

1

Exhibit B

{CW049035.3}

DEVELOPMENT AGREEMENT
CITY OF RIVERBANK
& PACAFI COOPERATIVE, INC. DBA FLAVORS
Page 31 of 66

Exhibit C

THREE (3) YEAR LEASE AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	1
Article 1 Basic Lease Provisions	2
Article 2 No Option	3
Article 3 Premises	3
Article 4 Term	3
Article 5 Rental	3
Article 6 Late charges	3
Article 7 Possession and Use	4
Article 8 Utilities Services	4
Article 9 Indemnity-Insurance-Waiver of Subrogation	5
Article 10 Tenant Conduct	6
Article 11 Tenant's Right to Make Alterations	7
Article 12 Mechanic's Liens	8
Article 13 Advertising Signs	8
Article 14 Fixtures and Personal Property	9
Article 15 Assigning, Mortgaging, Subletting, Changes in Corporate Ownership	9
Article 16 Tenant's Conduct of Business	10
Article 17 Repairs and Maintenance	11
Article 18 Bankruptcy-Insolvency	12
Article 19 Defaults by Tenant	12
Article 20 Eminent Domain	14
Article 21 Attorneys Fees	15
Article 22 Sale of Premises by Landlord	15
Article 23 Subordination - Attornment	16
Article 24 Captions and Terms	16
Article 25 Notices	16
Article 26 Obligations of Successors	17
Article 27 Security Deposit	17
Article 28 Miscellaneous	17
Article 29 Execution or Signatures	20

3 YEAR LEASE AGREEMENT

In consideration of the rents and covenants hereinafter set forth, Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the following described premises upon the following terms and conditions:

Article 1

BASIC LEASE PROVISIONS:

Effective Date: 11/01/2017

Landlord: Guaranty Holdings of California

Tenant: Pacafi Cooperative Inc.

Tenant's Trade Name & Use: Commerical Cannabis dispensary only (Article 7)
Space to be used solely for retail sales of cannabis and as a Cannabis dispensary

Lease Term: 3 years (Article 4)

Minimum Monthly Rental: \$9020.00 per month for first year (Article 5A)

To Landlord: 2908 E. Whitmore Avenue, H-216
Ceres, California 95307

To Tenant: To the Premises at 2213 Patterson Rd. Riverbank, CA (Article 26)

Security Deposit: \$9020.00 (Article 28)

Improvements: Tenant is responsible for all interior improvements and fixtures. Any expense concerning said improvements are the tenant's responsibility.

References in this Article 1 to other Articles are for convenience and designate some of the other Articles where references to the particular Fundamental Lease Provisions appear. Each reference in this Lease to any of the Fundamental Lease Provisions contained in this Article 1 shall be construed to incorporate all of the terms provided under each such Fundamental Lease Provision. In the event of any conflict between any Fundamental Lease Provision and the balance of the Lease, the latter shall control.

Article 2

OPTION

Tenant is not given the option to extend the term as of this time.

Article 3
PREMISES

The Landlord hereby leases and demises unto the Tenant and the Tenant hereby leases and takes from the Landlord, as of the Effective Date set forth in Article 1 ("Effective Date") for the term, at the rental and upon the covenants and conditions hereinafter set forth, the commercial space located at 2213 Patterson Rd., Riverbank, CA, which is referred to herein as the "premises".

Article 4
TERM

The Lease shall commence on November 1, 2017, and shall continue thereafter during the Lease Term specified in Article 1 hereof, unless sooner terminated, as hereinafter provided in this Lease.

Article 5
MONTHLY RENTAL AMOUNT

The Tenant agrees to pay as rental for the use and occupancy of the premises, at the time and in the manner hereinafter provided, the following sums of money:

A. MONTHLY RENTAL. \$1,020.00 as set forth in Article 1 hereof shall be payable each month in advance, on the first day of each month, without setoff or deduction, commencing November 1, 2017.

B. The rental amount shall increase to \$1,020.00 the second year as of November 1, 2018 and continue at that rate through November 1, 2020.

Article 6
LATE CHARGES

Tenant acknowledges that late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any mortgage or trust deed covering the premises. Should any installment of rent of any of the character described in Article 5 above, due from Tenant be not received by Landlord by the fifth (5th) day after such rent is due, Tenant shall pay to Landlord such unpaid amounts and a late charge equal to 6% of the payment amount plus any attorneys fees incurred by Landlord by reason of Tenant's failure to pay such amounts when due, including but not limited to a charge for a 3 day notice if served. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by the Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the over due amount, or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

All rental and other payments shall be paid by the Tenant to the Landlord at 2908 E. Whitmore Avenue H-216, Ceres, California 95307, or at such other place as may from time to time be designated by landlord in writing at least ten (10) days prior to the next ensuing payment date.

Article 7

POSSESSION AND USE

Possession of the premises shall be delivered to the Tenant free and clear of all tenants and occupants and the rights of either, except those as may be specified herein.

The Tenant shall use the premises solely for the purposes and under the trade name specified in Article 1 herein. The Tenant shall not use or permit the premises to be used for any other purpose or purposes or under any other trade name whatsoever without the written consent of the Landlord first had and obtained.

The Tenant further covenants and agrees that it will not use or suffer or permit any person or persons to use the premises or any part thereof for conducting therein a secondhand store, auction, distress or fire sale, or bankruptcy or going-out-of-business sale, or for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the State, County and City where the premises are situated, or of other lawful authorities, and that during said term the premises, and every part thereof, shall be kept by the Tenant in a clean and wholesome condition, and Tenant shall not cause any unclean or unwholesome condition, objectionable noises odors or nuisances in the premises and Tenant shall immediately correct, at Tenant's expense, any such condition.

Tenant is responsible to comply with all laws regarding their product. If at any time any part of tenant's business or use of the premises becomes illegal or violates a law or ordinance, Tenant must take every action necessary to comply with the law and failure to do so constitutes a material violation of this lease and is grounds for immediate termination of this lease.

Tenant shall not cook on the premises.

No aerial or antenna shall be erected on the roof or exterior walls of the premises without first obtaining, in each instance, the written consent of Landlord. Any aerial or antenna so installed without such written consent shall be subject to removal without notice at any time.

Article 8

UTILITIES

Tenant agrees, at its own expense, to pay for all utilities used by tenant on the premises from and after the delivery of possession thereof by Landlord. If a separate meter is provided for Tenant for any utilities, it shall be at tenant's expense. Garbage is agreed to be considered a utility expense.

Tenant must have current utilities supplied to the premises at all times. If electricity, water, or gas is disconnected from the premises due to tenants instructions or non-payment or any other tenant caused reason then the failure to pay by the tenant or the disconnection shall be a substantial and material breach and shall be good cause for eviction.

Tenant agrees not to disturb, terminate, interrupt, tamper with, adjust, or disconnect any utility service or meter, or submetering system or device. Violation of this section is a material and substantial breach of this Agreement and shall entitle Landlord to all available remedies under this Agreement including eviction.

In addition to the minimum annual rental specified in Article 1, Tenant shall pay, monthly, in advance, a utility charge to reimburse Landlord for any utilities furnished by Landlord, if any, to the premises.

Landlord shall not be liable in damage or otherwise for any failure or interruption of any utility service being furnished to the premises, and no such failure or interruption shall entitle Tenant to terminate this Lease.

Article 9

INDEMNITY - INSURANCE - WAIVER OR SUBROGATION

This obligation to indemnify shall include attorney's fees and investigation costs and all other reasonable costs, expenses and liabilities from first notice that any claim or demand is to be made or may be made.

The Tenant hereby waives any rights tenant may have against the Landlord on account of any loss or damage occasioned by the Tenant, the tenant's respective property, the premises, tenants, invitees, or other third parties, or its contents or to other portions of the premises, arising from any risk generally covered by fire and extended coverage insurance; and the tenant, on behalf of tenant's insurance companies insuring the property of the Tenant against such loss, waive any right of subrogation that tenant may have against the Landlord. The foregoing waiver of subrogation shall be operative only so long as available in the State where the premises are situated and do not invalidate any such policy.

Tenant further covenants and agrees that from and after the Effective Date, Tenant will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified in the form hereinafter provided for:

**** (i) PUBLIC LIABILITY AND PROPERTY DAMAGE. Bodily injury liability insurance with limits of not less than Three Million Dollars (\$3,000,000.00) combined each occurrence and in the aggregate insuring against any and all liability of the insured with respect to said premises or arising out of the maintenance, use or occupancy thereof. All such bodily injury liability insurance and property damage liability insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persona and injury or damage to property in this Article 9 contained.

(ii) PLATE GLASS. The Tenant shall be responsible for the maintenance of the plate glass on the premises but shall have the option either to insure the risk or self-insure.

(iii) TENANT IMPROVEMENTS. Insurance covering Tenant's leasehold improvements alterations, additions or improvements permitted under Article 11, trade fixtures, equipment (including air conditioning equipment and systems serving the premises), merchandise and personal property from time to time in, on or upon the premises, in an amount not less than eighty percent (80%) of their full replacement cost from time to time during the term of this Lease, providing protection against any peril included within the classification "Fire and Extended Coverage", together with insurance against vandalism and malicious mischief. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed.

(iv) POLICY FORM. All policies of insurance provided for herein shall be issued by insurance companies with general policy holder's rating of not less than A and a financial rating of not less than Class X as rated in the most current available "Best's" Insurance Reports, qualified to do business in the State where the premises is situated.

All such policies shall be issued in the names of Landlord and Tenant, and if requested by Landlord, Landlord's mortgagee or beneficiary, which policies shall be for the mutual and joint benefit and protection of the Landlord, Tenant and Landlord's mortgagee or beneficiary, and executed copies of such policies of insurance or certificates thereof shall be delivered to Landlord within ten (10) days after the Effective Date and thereafter, executed copies of renewal policies or certificates thereof shall be delivered to Landlord within thirty (30) days prior to the expiration of the term of each such policy.

All public liability and property damage policies shall contain a provision that the Landlord, although named an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents and employees by reason of the negligence of the Tenant. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by the Tenant in like manner and to like extent. All policies or insurance delivered to the Landlord must contain a provision that the company writing said policy will give to the Landlord twenty (20) days notice in writing in advance of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with or in excess of coverage which the Landlord may carry.

D. Notwithstanding anything to the contrary contained within this Article 9, the Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by the Tenant; provided, however, that the insured thereunder as their interests may appear and that the coverage afforded the Landlord will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements set forth herein are otherwise satisfied. The Tenant agrees to permit the Landlord at all reasonable times to inspect the policies of insurance of the Tenant covering risks upon the premises for which policies or copies thereof are not required to be delivered to the Landlord.

**** E. Landlord shall at all times from and after the Effective Date, maintain in effect a policy or policies of insurance covering the building of which the premises are a part, in an amount not less than eighty percent (80%) of full replacement cost (exclusive of the cost of excavations, foundations and footings) from time to time during the term of this Lease (or the amount of such insurance Landlord's mortgage lender requires Landlord to maintain, whichever is the greater), providing protection against any peril generally included within the classification "Fire and Extended Coverage", together with insurance against rental interruption, sprinkler damage, vandalism and malicious mischief, earthquake, flood or such other protective insurance. Landlord's obligation to carry the insurance provided for herein may be brought within the coverage of any so-called blanket policy or policies of insurance carried and maintained by Landlord, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance.

F. Landlord shall be named as an additional insured under said policy.

Article 10 **TENANT'S CONDUCT**

Tenant agrees that it will not at any time during the term of this Lease carry any stock of goods or do anything in or about the premises which will in any way tend to increase the insurance rates upon the building of which the premises are a part. Tenant agrees to pay the landlord forthwith upon demand the amount of any increase in premiums for insurance against loss by fire that may be charged during the term of this Lease on the

amount of insurance to be carried by Landlord on the building of which the premises are a part resulting from the foregoing or from Tenant doing any act in or about said premises which does so increase the insurance rates, whether or not the Landlord shall have consented to such act on the part of Tenant.

If Tenant installs upon the premises any electrical equipment which constitutes an overload of the electrical lines of the premises, Tenant shall at its own expense make whatever changes are necessary to comply with the requirements of the insurance underwriters and any governmental authority having jurisdiction thereover, but nothing herein contained shall be deemed to constitute Landlord's consent to such overloading. Tenant shall, at its own expense, comply with all requirements, including the installation of fire extinguishers or automatic dry chemical extinguishing system, of the insurance underwriters, Insurance Services Office, or any governmental authority having jurisdiction thereover, necessary for the maintenance of reasonable fire and extended coverage insurance of the premises.

Article 11 **TENANT'S RIGHT TO MAKE ALTERATIONS**

The Tenant accepts the premises in "as is" condition. The Landlord agrees that the Tenant may, at its own expense and after giving Landlord notice in writing of its intention to do so, from time to time during the term hereof, make alterations, additions and changes in and to the interior of the premises (except those of a structural nature) as it may find necessary or convenient for its purposes, provided that the value of the premises is not thereby diminished, and provided, however, that no alterations, additions or changes costing in excess of One Thousand Dollars (\$1,000.00) may be made without first procuring the approval in writing of the Landlord. In addition, no alterations, additions or changes shall be made to any store front, the exterior walls or roof of the premises, nor shall Tenant erect any mezzanine, unless and until the written consent and approval of the Landlord shall first have been obtained.

In no event shall Tenant make or cause to be made any penetration through the roof of the premises without the prior written approval of Landlord. Tenant shall be directly responsible for any and all damages resulting from any violation of the provisions of this Article.

All alterations, additions or changes to be made to the premises which require the approval of the Landlord shall be under the supervision of a competent licensed architect or competent licensed structural engineer and made in accordance with plans and specifications with respect thereto, approved in writing by the Landlord, before the commencement of work. All work with respect to any alterations, additions and changes must be done in a good and workmanlike manner, with all proper permits, and in compliance with all applicable governmental codes, ordinances, regulations and diligently prosecuted to completion to the end that the premises shall at all times be a complete unit except during the period of work. Landlord shall not be required to perform or pay for any work. Upon completion of such work, Tenant shall file for record in the office of the County Recorder where the building is located a Notice of Completion as required or permitted by law. Upon termination of the Tenant's leasehold estate such alterations, additions or changes shall be considered as improvements and shall not be removed by the Tenant but shall become a part of the premises. Any such changes, alterations and improvements shall be performed and done strictly in accordance with the laws and ordinance relating thereto. In performing the work of any such alterations, additions or changes, the Tenant shall have the work performed in such a manner as not to obstruct the access to the premises of any other tenant in the Premises.

In the event that Tenant shall make any permitted alterations, additions or improvements to the premises under the terms and provisions of this, Tenant agrees upon its part to carry such insurance as required by Article 9 covering any such alterations, additions or improvements, it being expressly understood and agreed that none of such alterations, additions or improvements shall be insured by Landlord under any insurance it may carry upon the building of which the premises are a part, no shall Landlord be required under any provisions for reconstruction of the premises to reinstall any such alterations, improvements or additions.

Article 12 **MECHANICS' LIEN**

The Tenant agrees that it will pay or cause to be paid all costs for work done by it or caused to be done by it on the premises, and the Tenant will keep the premises free and clear of all mechanics' liens and other liens on account of work done for the Tenant or persons claiming under it. The Tenant agrees to and shall indemnify, defend and save the Landlord free and harmless against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for the Tenant or persons claiming under it.

If the Tenant shall desire to contest any claim of lien, it shall furnish the Landlord adequate security of the value or in the amount of the claim, plus estimated costs and interest, or a bond of a responsible corporate surety in such amount conditioned on the discharge of the lien. If a final judgment establishing the validity or existence of a lien for any amount is entered, the Tenant shall pay and satisfy the same at once.

If the Tenant shall be in default paying any charge for which a mechanics' lien claim and suit to foreclose the lien have been filed, and shall not have given the Landlord security to protect the property and the Landlord against such claim of lien, the Landlord may (but shall not be so required to) pay the said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from the Tenant to the Landlord, and the Tenant shall pay the same to Landlord with interest at the highest rate allowable under the Usury Laws of the State of California from the dates of the Landlord's payments.

Should any claims of lien be filed against the premises of any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

The Landlord or its representatives shall have the right to go upon and inspect the premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which the Landlord may deem to be proper for the protection of the Landlord's interest in the premises. The Tenant shall, before the commencement of any work which might result in any such lien, give to the Landlord written notice of its intention to do so in sufficient time to enable the posting of such notices.

Article 13 **ADVERTISING SIGNS**

The Tenant shall not affix or maintain upon the glass panes and supports of the windows (and within 24 inches of any window), doors and the exterior walls of the premises any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first

received the written approval of the landlord as to size, type, color, location, copy, nature and display qualities. Anything to the contrary in this Lease notwithstanding, the Tenant shall not affix any sign to the roof of the premises.

Tenant shall erect signs in accordance with the provisions of the sign criteria of the City of Riverbank that applies to this location.

Article 14 **FIXTURES AND PERSONAL PROPERTY**

Any and all attached fixtures or attached equipment which is presently on the premises are and shall remain the property of the landlord.

Any trade fixtures, signs (with the exception of Tenant's exterior sign) and other personal property of the Tenant not affixed to the premises shall remain the property of the Tenant and the Landlord agrees that the Tenant shall have the right, provided the Tenant is not in default under the terms of this Lease, at any time, and from time to time, to remove such trade fixtures that are not attached to the premises, and other personal property which it may have stored in the premises. Nothing in this Article contained shall be deemed or construed to permit or allow the Tenant to remove such personal property without the immediate replacement thereof with similar personal property of comparable or better quality, as to render the premises unsuitable for conducting the type of business specified in Article 1.

The Tenant at its own expense shall immediately repair any damage occasioned to the premises by reason of the removal of such trade fixtures and other personal property, and upon the last day of the Lease Term or a date of earlier termination of this Lease, shall leave the premises in a neat and broom-clean condition, free of debris. All trade fixtures, signs and other personal property installed in or attached to the premises by the Tenant must be in new or in good condition when so installed or attached and shall remain with the property when Tenant vacates.

All improvements to the premises by the Tenant, including but not limited to light fixtures, floor coverings, partitions, but excluding trade fixtures, shall become the property of Landlord upon their installation. Landlord, at its sole and exclusive option, may require Tenant to remove Tenant's exterior office sign, which Tenant shall do within five (5) days after such request, at Tenant's sole cost and expense and the building shall be returned to its original condition.

Tenant shall pay, before delinquency, all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, as well as upon the trade fixtures, leasehold improvements, merchandise and other personal property in, on or upon the premises. In the event any such items of property are assessed with property of the Landlord, then, and in such event, such assessment shall be equitably divided between Landlord and Tenant to the end that Tenant shall pay only its equitable proportion of such assessment. Landlord shall determine the basis of prorating any such assessments and such determination shall be binding upon both Landlord and Tenant. No taxes, assessments, fees or charges referred to in this paragraph shall be considered as taxes under the provisions of Article 5 hereof.

Article 15 **ASSIGNING, MORTGAGING, SUBLETTING, CHANGE IN CORPORATE OWNERSHIP**

The Tenant shall not, and shall not have the power to, transfer, assign, sublet, enter into license or

concession agreements, change of ownership, mortgage or hypothecate this Lease or the Tenant's interest in and to the premises. Any attempted or purported transfer, assignment, subletting, license or concession agreement, change of ownership, mortgage or hypothecation without the Landlord's written consent shall be void and confer no rights upon any third person.

Without in any way limiting Landlord's right to refuse to give such consent for any other reason or reasons, Landlord reserves the right to refuse to give such consent if in Landlord's reasonable business judgment the quality of merchandising operation is or may be in any way adversely affected during the term of the Lease and/or the financial worth of the proposed new tenant is less than that of the Tenant executing this Lease or of Tenant and Tenant's Guarantor as the case may be. Nothing herein contained shall relieve Tenant or any Guarantor from its covenants and obligations for the term of this Lease.

Tenant agrees to reimburse Landlord for Landlord's reasonable administration and/or attorneys' fees incurred in conjunction with the processing and documentation of any such requested transfer, assignment, subletting, license or concession agreement, change of ownership, mortgage or hypothecation of this Lease or Tenant's interest in and to the premises.

Each transfer, assignment, subletting, license, concession agreement, mortgage or hypothecation to which there has been consent shall be by an instrument in writing in form satisfactory to Landlord, and shall be executed by the transferor, assignor, sublessor, licensor, concessionaire, hypothecator or mortgagor and the transferee, assignee, sublessee, licensee, concessionaire or mortgagee in each instance, as the case may be; and each transferee, assignee, sublessee, licensee, concessionaire or mortgagee shall agree in writing for the benefit of the Landlord herein to assume, to be bound by, and to perform the terms, covenants and conditions of this Lease to be done, kept and performed by the Tenant, including the payment of all amounts due to be come due under this Lease directly to the Landlord. One executed copy of such written instrument shall be delivered to the Landlord. Failure to first obtain in writing Landlord's consent or failure to comply with the provisions of this Article shall operate to prevent any such transfer, assignment, subletting, license, concession agreement or hypothecation from becoming effective.

In the event Tenant shall assign its interest in this Lease, or sublet the premises, with the Landlord's prior written consent, then the minimum monthly rental specified in Article 1 shall be increased, effective as of the date of such assignment or subletting, to the highest of (i) the rentals payable by any such assignee or sublessee pursuant to such assignment or sublease, or (ii) the minimum monthly rental specified in Article 1 increased by an rental increases then in effect. In no event shall the minimum monthly rental, after such assignment or subletting, be less than the minimum monthly rental specified in Article 1, or less than the last prior adjustment pursuant to any rent increases.

In addition to the foregoing, Tenant agrees that in the event Tenant shall assign or sublet its interest in this Lease in accordance with the provisions of this Article, Tenant shall pay to Landlord any and all consideration paid directly or indirectly for such assignment or sublease by Tenant from the assignee or sublessee of Tenant's leasehold interest.

If the Tenant hereunder is a corporation which, under the then current laws of the State where the Premises is situated, is not deemed a public corporation, or is an unincorporated association or partnership, the transfer, assignment or hypothecation of any stock or interest in such corporation, association or partnership in the aggregate in excess of twenty-five percent (25%) shall be deemed an assignment within the meaning and provisions of this Article 15.

Article 16

TENANT'S CONDUCT OF BUSINESS

The Tenant covenants and agrees that, continuously and uninterruptedly from and after its initial opening for retail sales of cannabis and as a cannabis dispensary. It will operate and conduct within the premises the retail sales of cannabis and as a cannabis dispensary, which it is permitted to operate and conduct under the provisions hereof, and that it will at all times keep its premises in a neat, clean and orderly condition.

Tenant agrees that all garbage, trash and rubbish of the said Tenant shall only be deposited within receptacles approved by Landlord and that there shall be no other trash receptacles permitted to remain outside of the building. Tenant agrees to cause such receptacles to be emptied and trash removed at Landlord's direction, and at Tenant's cost and expense, except if Landlord shall institute, provide, or cause to be provided such services or facilities for the removal of garbage, trash and rubbish.

Article 17

REPAIRS AND MAINTENANCE

The Tenant agrees at all times and at its own cost and expense, to repair, replace and maintain in good and tenantable condition the premises and every part thereof and including without limitation the utility meters, pipes and conduits, all fixtures, and other equipment therein, the store front or store fronts, all Tenant's signs, locks and closing devices, and all window sash, casement or frames, door and door frames, floor coverings, including carpeting, terrazzo or other special flooring, and air conditioning and heating all such items or repair, maintenance, alteration and improvement or reconstruction as may at any time or from time to time be required by a governmental agency having jurisdiction thereof.

All glass, both exterior and interior, is at the sole risk of Tenant, and any glass broken shall be promptly replaced by Tenant with glass of the same kind, size and quality.

Anything to the contrary notwithstanding contained in this Lease, Landlord shall not in any way be liable to the Tenant for failure to make repairs as herein specifically required of it unless this lease requires the Landlord to make the repairs and the Tenant has previously notified the Landlord, in writing, of the need for such repairs and the Landlord has failed to commence and complete said repairs within a reasonable period of time following receipt of the Tenant's written notification.

If Tenant refuses or neglects to make repairs and/or maintain the premises, or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall have the right, upon giving Tenant reasonable written notice of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant, and in the event such repairs are for the premises of two or more tenants, Landlord may, at its discretion, make certain prorations of the cost of said repairs to the tenants. In such event the cost of such work shall be paid by Tenant as additional rent promptly upon receipt of a bill therefor.

As used in this Article the expression "exterior walls" shall be deemed to include store fronts, plate glass, window cases or window frames, or doors or door frames, security grills or similar enclosures. It is understood and agreed that the Landlord shall be under no obligation to make any repairs, alterations, renewals, replacements or improvements to and upon the premises or the mechanical equipment exclusively serving the premises at any time except as in this Lease expressly provided.

Upon any surrender of the premises, the Tenant shall redeliver the premises to the Landlord in

good order, condition (broom-clean) and state of repair, ordinary wear and tear and casualty damages excepted, and excepting such items of repair as may be the Landlord's obligation hereunder. Unless waived by Landlord, in writing, Tenant shall accompany Landlord, or one of Landlord's authorized representatives, on a joint inspection of the Premises prior to such surrender and thereupon, deliver to Landlord the keys to said Premises.

The Tenant agrees to permit the Landlord and its authorized representatives to enter the premises at all times during business hours for the purpose of inspecting the same. The Tenant further covenants and agrees that the Landlord may go upon the premises and make any necessary repairs to the premises and perform any work therein

(i) which may be necessary to comply with any laws, ordinances, rules or regulations of any public authority or of the Insurance Services Office or of any similar body or

(ii) that the Landlord may deem necessary to prevent waste or deterioration in connection with the premises if the Tenant does not make or cause such repairs to be made or performed or cause such work to be performed promptly after receipt of written demand from the Landlord or

(iii) that Landlord may deem necessary to perform construction work incidental to any portion of The premises adjacent to, above or below the premises. Nothing herein contained shall imply any duty on the part of the Landlord to do any such work which under any provision of this Lease the Tenant may be required to do, nor shall it constitute a waiver of Tenant's default in failing to do the same. No exercise by the Landlord of any rights herein reserved shall entitle Tenant to any compensation, damages or abatement of rent from Landlord for any injury or inconvenience occasioned thereby. In the event Landlord makes or causes any such repairs to be made or performed, as provided herein, Tenant shall pay the cost thereof to Landlord, forthwith, as additional rent upon receipt of a bill therefore, except for the work as provided in subparagraph (iii) above which will be at the sole cost and expense of Landlord.

Article 18 **BANKRUPTCY-INSOLVENCY**

The Tenant agrees that in the event:

(i) all or substantially all of the Tenant's assets are placed in the hands of a receiver or trustee, and receivership or trusteeship continues for a period of thirty (30) days, or

(ii) Tenant makes an assignment for the benefit of creditors or is finally adjudicated a bankrupt, or

(iii) Tenant institutes any proceedings under the Bankruptcy Act as the same now exists or under any amendment thereto which may hereafter be enacted, or under any other act relating to the subject of bankruptcy wherein the Tenant seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization, or should any involuntary proceeding be filed against the Tenant under any such bankruptcy laws, then this Lease and any interest of Tenant in and to the premises shall not become an asset in any of such proceedings and, in any such events and in addition to any and all rights or remedies of the Landlord hereunder or by law provided, it shall be lawful for the Landlord to declare the term hereof ended and to reenter the premises and take possession thereof and remove all persons therefrom, and the Tenant shall have no further claim thereon or hereunder. The provisions of this Article 20 shall also apply to any Guarantor of this Lease.

Article 19 **DEFAULT BY TENANT**

Should the Tenant at any time be in default hereunder with respect to any rental payments or

other charges payable by the Tenant hereunder, or should the Tenant be in default in the prompt and full performance of any other of its promises, covenants or agreements herein contained; or should the Tenant vacate or abandon the premises; then the Landlord may treat the occurrence of any one or more of the foregoing events as a breach of this Lease, and in addition to any or all other rights or remedies of the Landlord hereunder and by the law provide, it shall be, at the option of the Landlord, without further notice or demand of any kind to Tenant or any other person:

(a) The right of the Landlord to declare the term hereof ended and to reenter the premises and take possession thereof and remove all persons therefrom, and the Tenant shall have no further claim thereon or hereunder; or

(b) The right of the Landlord without declaring this Lease ended to reenter the premises and occupy the whole or any part thereof for an on account of the Tenant and to collect said rent and any other rent that may thereafter become payable.

(c) The right of the Landlord, even though it may have reentered the premises, to thereafter elect to terminate this Lease and all of the rights of the Tenant in or to the premises.

Should the Landlord have reentered the premises under the provisions of subparagraph (b) above, the Landlord shall not be deemed to have terminated this Lease, or the liability of the Tenant to pay rent thereafter to accrue, or its liability for damages under any of the provisions hereof, by any such reentry or by any action in unlawful detainer, or otherwise, to obtain possession of the premises, unless the Landlord shall have notified the Tenant in writing that it has so elected to terminate this Lease, and the Tenant further covenants that the service by the Landlord of any notice pursuant to the unlawful detainer Statutes of California and the surrender of possession pursuant to such notice shall not (unless the Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to the Tenant) be deemed to be a termination of this Lease.

In the event of any entry or taking possession of the premises as aforesaid, the Landlord shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of the owner or owners thereof.

Should the Landlord elect to terminate this Lease under the provisions of subparagraph (a) or (c) above, the Landlord may recover from the Tenant as damages:

(i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus,

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform his obligations under this Lease or which in

- 13 -

the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in maintaining or preserving the premises after such default, preparing the premises for reletting to a new tenant, any repairs or alterations to the premises for such reletting, leasing commissions, or any other costs necessary or appropriate to relet the premises;

(v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Premises is situated.

As used in subparagraphs (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the highest rate then allowed, at the time of award, under the Usury Laws of the State of California. As used in subparagraph (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Premises at the time of award plus one percent (1%).

For all purposes of this Article 21, the term "rent" shall be deemed to be the minimum annual rental and all other sums required to be paid by Tenant pursuant to the terms of this Lease. All such sums, other than the minimum annual rental, shall be computed on the basis of the average monthly amount there of accruing during the immediately preceding sixty (60) month period, except that if it becomes necessary to compute such rental before such sixty (60) month period has occurred then such rental shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

In the event of default, all of the Tenant's fixtures, furniture, equipment, improvements, additions, alterations, and other personal property shall remain on the premises and in that event, and continuing during the length of said default, Landlord shall have the right to take the exclusive possession of same and to use same, rent or charge free, until all defaults are cured, or, at its option, at any time during the term of this Lease, to require Tenant to forthwith remove same.

Notwithstanding any other provisions of this Article, the Landlord agrees that if the default complained of, other than for the payment of monies, is of such a nature that the same cannot be rectified or cured within the period requiring such rectification or curing as specified in the written notice relating thereto, then such default shall be deemed to be rectified or cured if the Tenant within such period so notifies Landlord in writing that Tenant has commenced the rectification and curing thereof and shall continue thereafter with all due diligence to cause such rectification and curing and does so complete the same with the use of such diligence as aforesaid.

The remedies given to the landlord in this Article shall be in addition and supplemental to all other rights or remedies which the Landlord may have under the laws then in force, or in equity.

The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance or rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, or of any right of the Landlord to a forfeiture of the Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing signed by Landlord.

Article 20
EMINENT DOMAIN

In the event the entire premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking, and the Tenant shall thereupon be released from any liability thereafter accruing hereunder.

In the event more than twenty-five percent (25%) of the square footage of Floor Area of the premises is taken under the power of eminent domain by any public or quasi-public authority, or if by reason of any appropriation or taking, regardless of the amount so taken, the remainder of the premises is not one undivided parcel of property, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required vacate a portion of the premises, upon giving notice in writing of such election within thirty (30) days after receipt by the Tenant from the Landlord of written notice that said premises have been so appropriated or taken. In the event of such termination, both Landlord and Tenant shall thereupon be released from any liability thereafter accruing hereunder. The Landlord agrees immediately after learning of any appropriation or taking to give to the Tenant notice in writing thereof.

If this Lease is terminated in either manner hereinabove provided, the Landlord shall be entitled to the entire award or compensation in such proceedings, but the rent and other charges for the last month of the Tenant's occupancy shall be prorated and the Landlord agrees to refund to the Tenant any rent or other charges paid in advance. The Tenant's right to receive compensation or damages for its fixtures and personal property shall not be affected in any manner hereby.

However, Tenant shall be entitled to any condemnation award it is awarded in any action it brings on its own behalf due to a condemnation.

If both Landlord and Tenant elect not to so terminate this Lease, Tenant shall remain in that portion of the premises which shall not have been appropriated or taken as herein provided, or in the event less than twenty-five percent (25%) of the square footage of Floor Area of the premises shall be appropriated under the power of eminent domain by any public or quasi-public authority, and the remainder thereof is an undivided parcel of property, then in either such event the Landlord agrees, at the Landlord's cost and expense, to restore, as soon as reasonably possible, the premises on the land remaining, to a complete unit of like quality and character as existed prior to such appropriation or taking; and thereafter the minimum annual rental provided for in Article 1 hereof shall be reduced on an equitable basis, taking into account the relative value of the portion taken as compared to the portion remaining; and the Landlord shall be entitled to receive the total award or compensation in such proceedings.

For the purposes of this Article 20, a voluntary sale or conveyance in lieu of condemnation, but under threat of condemnation, shall be deemed an appropriation or taking under the power of eminent domain.

Article 21
ATTORNEY'S FEES

In the event that at any time during the term of this Lease either the Landlord or the Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, then, and in that event, the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the reasonable expenses of attorneys' fees and disbursements incurred therein by the successful party. The attorney fees shall be limited to \$2,000.00.

Article 22

SALE OF PREMISES BY LANDLORD

In the event of any sale or exchange of the premises by the Landlord, the Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Agreement arising out of any act, occurrence or omission relating to the premises or this Agreement occurring after the consummation of such sale or exchange and assignment.

Article 23

SUBORDINATION - ATTORNMENT

Upon written request of the Landlord, or any mortgagee or beneficiary of Landlord, Tenant will in writing subordinate its rights hereunder to the interest of any ground lessor of the land upon which the premises are situated, as well as the lien of any mortgage or deed of trust, now or hereafter in force against the land and building of which the premises are a part, and upon any building hereafter placed upon the land of which the premises are a part, and to all advances made or hereafter to be made upon the security thereof.

The provisions of this Article to the contrary notwithstanding, and so long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by the Landlord covering the premises, the Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease, provided that the purchaser shall acquire and accept the premises subject to this Lease.

Within ten (10) days after written request therefore by Landlord, or in the event that upon any sale, assignment or hypothecation of the premises or the land thereunder by the Landlord, an offset statement shall be required from Tenant, Tenant agrees to deliver in recordable form a certificate addressed to any such proposed mortgagee or purchaser or to the Landlord certifying that this Lease is in full force and effect (if such be the case) and that there are no defenses or offsets thereto or stating those claimed by Tenant.

Article 24

CAPTIONS AND TERMS

The captions of Articles of this Lease are for convenience only, are not a part of this lease and do not in any way limit or amplify the terms and provisions of this Lease. Except, as otherwise specifically stated in this lease, "the term" shall include the original term and any extension, renewal or holdover thereof.

If more than one person or corporation is named as Landlord or Tenant in this Lease and executes the same as such, then and in such event, the words "Landlord" or "Tenant" wherever used in this Lease are intended to refer to all such persons or corporations, and liability of such persons or corporations for compliance with and performance of all the terms, covenants and provisions of this Lease shall be joint and several. The masculine pronoun used herein shall include the feminine or the neuter as the case may be, and the use of the singular shall include the plural.

Article 25

NOTICES

Wherever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be given or served, and shall not be deemed to have been duly given or served unless in writing and forwarded by certified or registered mail, addressed to the addresses of the parties specified in Article 1 hereof. Either party may change such address by written notice by certified or registered mail to the other.

Any notices Landlord is required or authorized to deliver to Tenant in order to advise Tenant of alleged violations of Tenant's covenants contained in this lease must be in writing but shall be deemed to have been duly given or served upon Tenant by delivering a copy of such notice to one of Tenant's managing employees at the premises and by mailing a copy of such notice to Tenant by certified mail.

Article 26
OBLIGATIONS OF SUCCESSOR

The parties hereto agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof, and all of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

Article 27
SECURITY DEPOSIT

A. Tenant shall pay to Landlord the sum specified in Article 1 hereof as a "Security Deposit". Said deposit shall be held by Landlord without liability for interest, as a security deposit for the faithful performance by Tenant of all the terms of the Lease by said Tenant.

B. If any of the rents herein reserved or any other sum payable by Tenant to Landlord shall be overdue and unpaid or should Landlord make payments on behalf of the Tenant, or Tenant shall fail to perform any of the terms of this Lease, then Landlord may have on account thereof, appropriate and apply said entire deposit or so much thereof as may be necessary to compensate Landlord toward the payment of rent or additional rent or loss or damage sustained by Landlord due to such breach on the part of Tenant; and Tenant shall forthwith upon demand restore said security to the original sum deposited. Should Tenant comply with all of said terms and promptly pay all of the rentals as they fall due and all other sums payable by Tenant to Landlord, said deposit shall be returned in full to Tenant at the end of the term. If Landlord claims deductions against the security deposit, then Landlord and Tenant agree that the remaining deposit shall be returned to Tenant no later than twenty one (21) days after Landlord receives possession of the premises.

C. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, such security deposit shall be deemed to be applied first to the payment of rent and other charges due Landlord for all periods prior to filing of such proceedings.

D. Landlord may deliver the funds deposited hereunder by Tenant to the purchaser of Landlord's interest in the premises in the event that such interest be sold and thereupon Landlord shall be discharged from any further liability with respect to such deposit, and this provision shall also apply to any subsequent transferees.

Article 28
MISCELLANEOUS

A. It is agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant, or any other party.

B. It is agreed that if any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render provision valid, then the provision shall have the meaning which renders it valid.

C. In the event the Tenant hereunder shall be a corporation, the persons executing this Lease on behalf of the Tenant hereby covenant and warrant that the Tenant is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Tenant to do business in the State where the premises is situated; all franchise and corporate taxes have been paid to date; and all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due. Further that the person executing this agreement represents that they have specific authority from the corporation to do so.

D. It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. Any amendments or modifications to the Lease must be in writing, executed by both Landlord and Tenant, in order to be effective and binding.

E. Landlord reserves the absolute right to affect such other tenancies in the premises as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests of the premises. Tenant does not rely on the fact, nor does Landlord represent, that any specific Tenant or number of tenants shall during the term of this Lease occupy any space in the premises. This Lease is and shall be considered to be the only agreement between the parties hereto and their representatives and agents. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

F. The laws of California shall govern the validity, performance and enforcement of this Lease. Although the printed provisions of this Lease were drawn by Landlord, this Lease shall not be construed either for or against Landlord or Tenant, but this Lease shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result. Venue for any legal action shall be in Stanislaus County.

G. Landlord's consent to, or approval of, any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

H. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other charges to be paid by Tenant pursuant to this Lease.

- 18 -

I. Tenant hereby expressly waives any and all rights or redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

J. The Tenant herein covenants by and for himself his heirs, executors, administrators and assigns and all persons claiming under or through him, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, marital status, color, creed, national origin or ancestry, in the subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the Tenant himself, or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the premises herein leased.

K. If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of rents or other income from such property receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right title and interest in the premises site, and neither Landlord nor any of the individuals or entities comprising the Landlord, shall be liable for any deficiency.

Landlord shall not be liable for any damage done or occasioned by or from the electrical system, the heating or air conditioning system, the plumbing and sewer systems in, upon or about the Premises or the building of which the Premises are a part, nor for damages occasioned by water, snow or ice being upon or coming through the roof, trapdoor, walls, windows, doors or otherwise, nor for any damage arising from acts of negligence of Co-Tenants or other occupants of the building or buildings of which the Premises may be a part, or the acts of any owners or occupants of adjoining or contiguous properties; and furthermore, Landlord shall not be liable for any damage occasioned by reason of the construction of the Premises or for failure to keep the Premises in repair, unless Landlord is obligated to make such repairs under the term hereof, and unless notice of the need for repairs has been given to Landlord, a reasonable time has elapsed and Landlord has failed to make such repairs.

In any event, Landlord shall not be liable for any damage to Tenant's leasehold improvements, fixtures, or merchandise resulting from fire or other insurable hazards, regardless of the cause thereof, and Tenant hereby releases Landlord from all liability for such damage.

L. The submission of this Lease to Tenant shall be for examination purposes only and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest by Tenant in, the Premises or any other premises situated in the premises. Execution of this Lease by Tenant and return to Landlord shall not be binding upon Landlord, notwithstanding any time interval, until Landlord has in fact executed and delivered an executed copy of this Lease to the Tenant.

M. Tenant warrants that it has not had any dealings with any realtor, broker, or agent, in connection with the negotiation of this Lease, and agrees to pay and to hold Landlord harmless from any cost, expense or liability for any compensation, commission, or charges claimed by any realtor, broker, or agent, with respect to this lease or the negotiation of this Lease.

N. Landlord and Tenant hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either party on any matter whatsoever arising out of, or in any way connected with, this lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

AS (Tenant to initial) SR (Landlord to initial)

O. Tenant shall fully release and indemnify Landlord and Landlord's legal representatives, assigns, and agents, partners, and owners, from all liability, rights, claims, interests and causes of action which are brought against Landlord as a result of any actions or conduct of Tenant or that are brought as a result of Tenants business or tenancy. This shall include any attorney fees or other costs incurred which Landlord may incur.

Article 22
EXECUTION

IN WITNESS WHEREOF, the Landlord and Tenant have duly executed this Lease on the day and year first above written. This lease is effective upon the last signature.

Guaranty Holdings of California, Inc.
LANDLORD: Shay Roberts
By: _____
TENANT: AS
TENANT: _____
TENANT: _____

T:\WPDOCS\RENTAL & LEASE AGREEMENTS\3 YEAR COMMERCIAL LEASE AGREEMENT GUARANTY HOLDINGS.wpd

Exhibit D

Notice of Non-Performance Penalty

DATE: _____, 20__

PARTIES:

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

PACAFI COOPERATIVE, INC DBA FLAVORS, a California
cooperative corporation

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

- A. By Instrument No. _____, which was recorded in the Official Records of Stanislaus County, California on _____, 2017, City recorded a development agreement between the City and Pacafi Cooperative, Inc. DBA Flavors ("Developer"), dated December 12, 2017 (the "Development Agreement"), relating to the development and operation of a cannabis dispensary.
- B. Pursuant to Section 4.2 of the Development Agreement, Developer agrees to pay to City a Public Benefit on the first business day of each month during the term of the Development Agreement.
- C. On _____, 20__, the Public Benefit was due to City by Developer. City did not receive payment.
- D. Pursuant to Section 4.5 of the Development Agreement, if Developer fails to make payment when it is due, City may impose a penalty of one percent (1%) of the total of the past due amounts ("Penalty"). As of _____, 20__, the past due amount equals \$ _____. The Penalty owed by Developer equals \$ _____ ("Penalty Amount").
- E. Pursuant to Section 4.5 of the Development Agreement, Developer shall make payment of the Penalty Amount in a single installment due within fifteen (15) days of delivery of this Penalty Notice ("Penalty Due Date").

F. Pursuant to Section 4.6 of the Development Agreement, if Developer fails to pay the Penalty Amount before the Penalty Due Date, then in addition to the Penalty Amount specified in subdivision (E), Developer shall pay City interest on the Penalty Amount, at the rate of eighteen percent (18%) per annum ("Penalty Interest Payment"), computed from the Penalty Due Date specified in subdivision (F). The Penalty Interest Payment is due fifteen (15) days following delivery of the Penalty Due Date. As of _____, 20__, the Penalty Interest Payment amount equals \$_____.

G. Nothing contained herein shall constitute a waiver of City's future claims for the Public Benefit, Penalty, or interest on the Penalty.

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

CITY OF RIVERBANK,
a California municipal corporation

By: _____
City Manager

Exhibit E

INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING

THIS INDEMNITY AGREEMENT FOR LAND USE ENTITLEMENT PROCESSING ("Agreement") is made and entered into on this ____ day of _____ 2017, ("Effective Date") by and between the City of Riverbank, a California municipal corporation ("City") and Pacafi Cooperative, Inc. DBA Flavors ("Applicant"). City and Applicant may be referred to herein individually as a "Party" or collectively as the "Parties". There are no other parties to this Agreement.

RECITALS

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

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

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

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

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

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

G. Applicant has an agreement to purchase that certain real property located in the City of Riverbank, identified as Stanislaus County Assessor's Parcel Number 075-026-044 (the "Property"), shown on **Exhibit A** attached hereto ("Property Description").

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

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

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

AGREEMENT

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

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

Section 2. Applicant's Indemnification Obligations.

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

Applicant's obligations under this Agreement to indemnify City shall apply to any claim, lawsuit or challenge against City brought against the Project, specifically including, but not limited to, any legal challenge based on the California Environmental Quality Act, codified in California Public Resources Code section 21000 et seq.; actions or proceedings brought to challenge the

validity of environmental documents prepared in conjunction with the approval of the Project or Land Use Entitlements, or the requirements of any other federal, state, or local laws, including, but not limited to, general plan, specific plan, and zoning requirements.

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

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

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

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

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

2.7. Continuing Obligation. Applicant shall be and remain personally obligated to all of the terms of this Agreement, notwithstanding any attempt to assign, delegate or otherwise transfer all or any of the rights or obligations of this Agreement, and notwithstanding a change in or transfer of Developership of the real property upon which the Project is located (or any interest therein). However, Applicant may be released from such obligations if Applicant

obtains City's prior written consent to such transfer, which consent shall not be unreasonably withheld.

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

Section 4. Notice. Any notice or communication required hereunder between City and Applicant must be in writing and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day, or on a Saturday, Sunday or holiday, shall be deemed to have been given and received on the next normal business day. 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, California 95367
Attention: City Clerk

With copy to

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

and

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

If to Applicant:

Pacafi Cooperative, Inc. DBA Flavors

and

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

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

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

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

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

Section 10. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement, and the names, titles, and capacities herein

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

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

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

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

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

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

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

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

Section 18. Waiver. No covenant, term, or condition, or the breach thereof, shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition._

Section 19. Counterparts. This Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto,

notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

[SIGNATURE PAGE TO FOLLOW]

COPY

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

APPLICANT

Pacafi Cooperative, Inc. DBA Flavors, a California cooperative corporation

By: _____

Name: _____

Its: _____

Date: _____

CITY

City of Riverbank, a California municipal corporation

By: _____
Sean Scully, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Douglas L. White, Deputy City Attorney

Exhibit F

Notice of Termination

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

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

NOTICE OF TERMINATION AND RELEASE OF DEVELOPMENT AGREEMENT

DATE: _____, 20__

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

PACAFI COOPERATIVE, INC DBA FLAVORS, a California cooperative
corporation

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

- A. By Instrument No. _____, which was recorded in the Official Records of Stanislaus County, California on _____, 2017, City recorded a development agreement between the City and Pacafi Cooperative, Inc. DBA Flavors ("Developer"), dated _____, 2017 (the "Development Agreement"), relating to the development and operation of a cannabis dispensary.
- B. Pursuant to Sections 1.7 and 9.1 of the Development Agreement, the term of the Development Agreement expires three (3) years from _____, 2017, on _____, 2020.

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

NOW, THEREFORE, City hereby terminates, cancels, and otherwise releases Developer and Developer's heirs, executives, administrators, successors, and assigns from their obligations in the Development Agreement on this ____ (day) of ____ (month), 2020, and relinquishes any right it may hereafter have to enforce any of the terms and provisions set forth in the Development Agreement, unless otherwise set forth in the Development Agreement. This termination, cancellation, and release shall be effective upon the recordation of this Release in the office of the County Recorder for the County of Stanislaus, State of California.

CITY OF RIVERBANK,
a California municipal corporation

By: _____
City Manager

Exhibit G

Assignment and Assumption Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

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

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20____, by and between Pacafi Cooperative, Inc. DBA Flavors ("Developer") and _____ ("Assignee"). Developer may be referred to herein as ("Assignor").

RECITALS

A. On _____, 2017, Assignor and the City of Riverbank (the "City") entered into that certain agreement entitled "Development Agreement by and between the City of Riverbank, a California municipal corporation and Pacafi Cooperative, Inc. DBA Flavors" relating to the improvement, development, and use of real property to operate a cannabis dispensary business (the "Development Agreement"), originally recorded upon Stanislaus County Assessor's Parcel Number 075-026-044 (the "Property").

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

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

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

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

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

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

[Signatures on the following page]

ASSIGNOR / DEVELOPER:

PACAFI COOPERATIVE, INC. DBA
FLAVORS, a California cooperative
corporation

Its: _____

ASSIGNEE

_____, a
California _____

By: _____

AGREED TO AND ACCEPTED:

CITY OF RIVERBANK
a California municipal corporation

City Manager

RIVERBANK CITY COUNCIL AGENDA ITEM NO. 6.3

SECTION 6: NEW BUSINESS

Meeting Date: January 8, 2019

Subject: Consideration of a **Resolution** Creating a Permanent Moratorium on the Processing and Issuance of Additional Permits for a Cannabis Dispensary within the City of Riverbank and Directing Staff to Bring Forward an Amendment to Riverbank Municipal Code Chapter 120: Cannabis Regulations

From: Sean Scully, City Manager

Submitted by: Donna M. Kenney, Planning and Building Manager

RECOMMENDATION

It is recommended that the City Council review the provided information, take public comment, and chose one of the following options:

1. Approve the proposed Resolution 2019-XXX to make the moratorium on cannabis dispensaries permanent and direct staff to bring forward an amendment to Chapter 120 of the Riverbank Municipal Code; or
2. Allow the existing moratorium to expire on January 23, 2019.

SUMMARY

The City of Riverbank has had two cannabis dispensary applications approved through the public hearing process in fiscal year 2017-2018 and none in FY 2018-2019. On January 23, 2018 the City Council considered and approved a temporary six (6) month moratorium on dispensary applications in order to evaluate the actual experiences of the first two dispensaries. On June 26, 2018 Council extended the moratorium for a second six (6) month period. The first dispensary ("Flavors") has been in operation since mid-April 2018. The second dispensary ("Riverbank Wellness") has been working on a tenant improvement in 2018 and was issued their temporary occupancy permit and business license mid-December 2018. Located within an older building, they found additional work to do in almost every wall and floor board they opened up. Planning has had one application on hold since the moratorium was established ("Elevations" at Third and Atchison Streets) and it received Architectural and Site Plan Review approval for a retail shell on April 17, 2018.

BACKGROUND

On November 8, 2016, the citizens of California approved Proposition 64 (Adult Use of Cannabis). In accordance with Proposition 64, recreational use of cannabis is now legal throughout the state, but each local jurisdiction has the right to police commercial cannabis activities within their boundaries.

On August 8, 2017 and August 22, 2017, the Riverbank City Council adopted Ordinance No. 2017-007, which provides a regulatory structure for commercial cannabis activities in the City of Riverbank. Staff drafted applications and began meeting with dispensary applicants. Two dispensaries, Flavors and Riverbank Wellness, went through the public hearing process and were subsequently approved to operate.

On January 23, 2018, the City Council considered and approved a six (6) month moratorium on the submittal and processing of cannabis dispensary applications. Staff was directed to assess the impacts of the two approved dispensaries on the surrounding neighborhoods and report back to Council at the end of the six months. Since Flavors had only been open three (3) months at the time and Riverbank Wellness was not open at all, the moratorium was extended an additional six (6) months and staff continued to monitor pedestrian and vehicle traffic.

ANALYSIS

Staff continues to make site visits to Flavors several times per week on different days and at different times and has yet to encounter a full parking lot or a line of cars on Patterson Road waiting to turn right into Flavors. Congestion on Oakdale Road has been encountered twice around 12:30-1:00 pm as vehicles make an illegal left into McDonald's parking lot. Flavors' employees still park on the west side of their building to ensure the public has access to all the spaces between the building and Patterson Road. The event center adjacent to the rear of the Flavors parcel installed a chain across their parking lot entrance to ensure Flavors' customers don't use their parking spaces. Even with the event center parking inaccessible, staff has yet to encounter a full Flavors parking lot.

Per consultation with Police Chief Kiely there was no increase in crime in their neighborhood that can be attributed to Flavors. Of the actual calls for service to this location within the last 82 days, two (2) were false panic/robbery alarms where Deputies determined all was secure and they were accidental trips. Another call was a call where a person called dispatch to report that a light flashing at the business was blinking at such a high rate of speed that it was going to cause a traffic accident or cause someone to have a seizure (neither happened). The responding Deputy spoke with management, the light appeared to be malfunctioning, but regardless was NOT a public safety hazard and was fixed.

There was also one call from a neighboring business which reported an adult male (who had just come from Flavors) was loitering in the neighboring business parking lot. He was gone when Deputies arrived. Finally, in a related incident, a vehicle burglary occurred at the Chevron gas pumps in Crossroads Shopping Center where a vendor that was going to deliver to Flavors had cash stolen from his delivery van when he left it unattended and went inside Chevron. Overall, police activity levels are still consistent with police activity levels prior to the business opening.

STRATEGIC PLAN

The City of Riverbank Strategic Planning Session is a plan and set of goals that Riverbank will work towards for the next three (3) years. The completion of development agreements for cannabis activities such as dispensaries is a specific objective. It is consistent with the established General Plan goal to Achieve and Maintain Financial Stability and Sustainability as part of the City's Vision "To be recognized as a premier community where individuals, families and businesses thrive in a safe and beautiful environment." The one-year moratorium on new dispensaries gave the City Council the opportunity to review and assess the two (2) approved cannabis dispensaries to ensure the public peace, health, safety, and welfare of its citizens.

FINANCIAL IMPACT

With a moratorium in place, the City has not been accepting any new applications or processing the application currently on hold. Therefore, the City did not receive any new deposits or fees during the original six (6) month moratorium and the six (6) month extension. Staff processed a deposit refund for one (1) dispensary applicant who withdrew his application at the beginning of the original moratorium. However, Flavors began operations mid-April and has made Public Benefit payments totaling \$303,351.95 as of December 1, 2018.

ATTACHMENT

1. Proposed Resolution No. 2019-XXX

CITY OF RIVERBANK

RESOLUTION NO. 2019-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, CREATING A PERMANENT MORATORIUM ON THE PROCESSING AND ISSUANCE OF ADDITIONAL PERMITS FOR A CANNABIS DISPENSARY WITHIN THE CITY OF RIVERBANK AND DIRECTING STAFF TO BRING FORWARD AN AMENDMENT TO RIVERBANK MUNICIPAL CODE CHAPTER 120: CANNABIS REGULATIONS

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

WHEREAS, in 2016, the voters of California approved Proposition 64 entitled the "Control, Regulate and Tax Adult Use of Marijuana" ("AUMA"). AUMA legalized the adult-use and possession of cannabis by persons 21 years of age and older and the personal cultivation of up to six (6) cannabis plants within a private residence; and

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

WHEREAS, the City Council adopted Development Agreements for two (2) cannabis dispensaries before adopting a six (6) month moratorium and a six (6) month extension to evaluate the operation of these dispensaries once open and active before making a decision to process additional applications; and

WHEREAS, the City Council, based on its independent review and analysis of staff's recommendations, oral and written testimony, and the record as a whole, finds, after due study, deliberation, and public hearing, and based on its independent judgment, that one (1) year is enough time to study the situation and prohibit additional medicinal and/or adult use cannabis dispensaries within the City of Riverbank; and

WHEREAS, "permits" shall be clearly defined as the conditional use permits and development agreements required in order to obtain approval for a dispensary use in Riverbank; and

WHEREAS, the current moratorium became effective on January 23, 2018, was due to lapse on July 23, 2018, and a six (6) month extension provided a final expiration date of January 23, 2019.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Riverbank that:

SECTION I. Council imposes a permanent moratorium on the issuance and processing of permits for medicinal and/or adult use cannabis dispensaries. The moratorium shall apply to those applications or future applications who have not yet been considered at Planning Commission and City Council. The purpose of this moratorium is to prohibit additional cannabis dispensaries and their impact on surrounding neighborhoods.

SECTION II. Council seeks to make the moratorium permanent and directs the City Manager and City staff to bring forward an ordinance amendment on Chapter 120: Cannabis Regulations.

SECTION III. Council hereby directs and orders that no permits for cannabis dispensaries shall be issued or processed by the City of Riverbank due to the permanent moratorium.

SECTION IV. This Resolution shall take effect and be in full force from and after the date of its passage.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 8th day of January, 2019; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of __:

AYES:

NAYS:

ABSENT:

ABSTAINED:

ATTEST:

Annabelle H. Aguilar, CMC
City Clerk

APPROVED:

Richard D. O'Brien
Mayor

**RIVERBANK CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY
AGENDA ITEM NO. 6.4**

SECTION 6: NEW BUSINESS

Meeting Date:	January 8, 2019
Subject:	Annual Consideration of City Council Appointments to Intergovernmental Boards and Committees and City Council/LRA Appointments to Internal City Committees for the Year 2019
From:	Sean Scully, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk

RECOMMENDATION

It is recommended that the City Council / Local Redevelopment Authority Board:

- 1) review the appointment lists; and
- 2) volunteer or nominate a member of the City Council/LRA to serve as the representative; and
- 3) by roll call vote, ratify the appointments for the year 2019.

SUMMARY

One of the first orders of business of each year is for the City Council and LRA Board to review the prior year's Board and Committee appointment lists as adopted, nominate someone or volunteer for an appointment, and ratify the changes agreed upon by roll call vote.

The City's participation in various intergovernmental boards and committees provides a valuable opportunity for the City's legislative body to actively engage in the discussion and decisions that affect the residents of Riverbank, and ensure the City's best interests are taken into consideration.

In addition, Members of the City Council, who also serve as the LRA Board, function in a liaison role to internal City/LRA committees which provides the opportunity for Members to share their perspectives and recommendations on matters to be addressed while, simultaneously, foster open communication and collaboration with a diverse committee of various community interests and expertise.

The 2018 list of external and internal boards/committees/commissions is provided for review and ratification of any changes made for the year of 2019.

STRATEGIC PLAN

City Council and Staff serve as city representatives fostering relationships with external agencies and community members, and at times may involve collaborating efforts on accomplishing various aspects of the strategic plan.

ATTACHMENTS

1. Prior year 2018 Adopted Boards and Committees lists.

RIVERBANK CITY COUNCIL
INTERGOVERNMENTAL BOARDS & COMMITTEES
 (Last revised and ratified on 02/13/2018)

BOARD / COMMITTEE	COUNCIL REPRESENTATIVE (2018 - Appointments)
<u>LEAGUE OF CALIFORNIA CITIES</u> <u>CENTRAL VALLEY DIVISION EXECUTIVE COMMITTEE</u> <u>Meets:</u> Quarterly, TBD when scheduled <u>Location:</u> It rotates among the Northern and Southern central valley cities, TBD. (Annual breakfast meeting of the year takes place at the League's Annual Conference in September) The Central Valley Division (CVD) is lead by an executive committee made up of local government officials who provide overall guidance and direction for CVD activities. These activities provide a variety of avenues for individuals to take the opportunity to exchange ideas and information and share the advantages of cooperative advocacy.	Councilmember Cal Campbell Mayor Richard D. O'Brien (Alternate)
<u>LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE</u> <u>VOTING DELEGATE(S)</u> The League of California Cities is an association of California City Officials who work together to enhance their knowledge & skills, and exchange information & combine resources so that they may influence policy decisions that affect cities.	Primary and Alternate to be determined in June. (The appointment is typically made in June upon the League's request.)
<u>NORTH COUNTY CORRIDOR TRANSPORTATION</u> <u>EXPRESSWAY AUTHORITY BOARD</u> <u>Meets:</u> 3rd Wed. of every alternate month; 4:30-6:pm <u>Location:</u> Tenth Street Place, Board Chambers, 1010 10th Street (basement), Modesto The North County Corridor Transportation Expressway Authority (Authority) is the lead implementing agency for the North County Corridor State Route 108 East Route Adoption. The Authority leads the overall effort. These meetings pertain to locating the best route for the northern expressway from Hwy 99 to the eastern side of Oakdale.	Mayor Richard D. O'Brien Vice Mayor Darlene Barber-Martinez (Alternate)

RIVERBANK CITY COUNCIL
INTERGOVERNMENTAL BOARDS & COMMITTEES
(Last revised and ratified on 02/13/2018)

BOARD / COMMITTEE	COUNCIL COUNCIL REPRESENTATIVE (2018 - Appointments)
<u>San Joaquin Valley Air Pollution Control District Special City Selection Committee</u> Meets: At least once annually and as needed Location: Northern Region Office, 4800 Enterprise Way, Modesto This Committee's purpose is to appoint (5) Council Members to the San Joaquin Valley Air Pollution Control District's Governing Board.	Vice Mayor Darlene Barber-Martinez Councilmember Leanne Jones-Cruz (Alternate)
<u>STANCOG – POLICY BOARD</u> Meets: The 3rd Wednesday of each month; 6:pm Location: 1111 I Street, Suite 308, Modesto To work together with local cities to enhance communication, cooperation and comprehensive planning in dealing with regional issues.	Mayor Richard D. O'Brien Councilmember Cal Campbell (Alternate)
<u>STANISLAUS OFFICE OF EMERGENCY SERVICES DISASTER COUNCIL</u> Meets: Once a year or as necessary (tentative April 13th) Location: Harvest Hall Cornucopia Way, Modesto To make recommendations to local governing agencies on matters pertinent to development of mitigation, disaster preparedness, response & recovery plans, and programs for any potential local emergency.	Vice Mayor Darlene Barber-Martinez Councilmember Leanne Jones-Cruz (Alternate) (Note: The appointed Councilmember serves a 2-year term; ending 12/2018.)
<u>WORKFORCE DEVELOPMENT BOARD</u> (formerly the Stanislaus Business Alliance Board that ended 6/2016) Meets: The 1st Monday of the 1st month of every quarter. Location: Kirk Lindsey Center, 1020 10th St. Ste.102, Modesto The WDB is a business led public body whose members are appointed by the Board of Supervisors to oversee activities funded by the Workforce Innovation and Opportunity Act. The WDB is responsible for shaping and strengthening local and regional workforce development efforts to support small, medium and large business job growth.	Councilmember Cal Campbell (Note: There is no alternate designation to the Board. Councilmember Campbell was appointed on 7/2016 by the Board of Supervisors to serve a 2-year term, expiring 6/30/2018.)

RIVERBANK CITY COUNCIL
INTERGOVERNMENTAL BOARDS & COMMITTEES
(Last revised and ratified on 02/13/2018)

BOARD / COMMITTEE	COUNCIL REPRESENTATIVE (2018 - Appointments)
<u>Lower Stanislaus River Trail Improvement Plan Committee</u> (Resolution No. 2013-069) <u>Meets:</u> TBD <u>Location:</u> TBD Representatives of the Cities of Riverbank, Oakdale, and Ripon and the Local Government Commission and the National Park Service will be working together to enhance public use and stewardship of the lower Stanislaus River.	No representative would be assigned until further notice.

**CITY COUNCIL / LOCAL REDEVELOPMENT AUTHORITY BOARD
INTERNAL CITY COMMITTEES**

(Last revised and ratified on 02/13/2018)

CITY/LRA COMMITTEES	COUNCIL/LRA LIAISON (2018 – Appointments)
<u>BUDGET ADVISORY COMMITTEE (BAC)</u> <u>Meets:</u> As needed <u>Location:</u> City Hall Council Chambers or City Hall South Conference Room This (7) resident member advisory committee, including (1) non-voting Council representative and a Council alternate, reviews and discusses the City's operating budget and makes recommendations on projects, programs, and policies to the City Council.	Councilmember Cindy Fosi Councilmember Leanne Jones Cruz (Alternate)
<u>FRIENDS OF JACOB MYERS PARK (JMP)</u> (A non-profit organization) <u>Meets:</u> On a monthly basis <u>Location:</u> City Hall Council Chambers Works on projects, park planning, and fundraising events.	Vice Mayor Darlene Barber-Martinez Councilmember Cindy Fosi (Co-Primary) Councilmember Leanne Jones Cruz (Alternate)
<u>LOCAL REDEVELOPMENT AUTHORITY (LRA) COMMUNITY ADVISORY COMMITTEE</u> <u>Meets:</u> As needed. <u>Location:</u> LRA Conference Room, 5300 Claus Road, Building 17, Modesto, CA 95357 The (12) member Committee provides feedback and recommendations to the LRA Board and staff regarding the reuse and redevelopment of the Riverbank Army Ammunition Plant, and to promote interest and involvement by the community in the project.	This committee voluntarily decided to suspend meetings indefinitely.
<u>SISTER CITY COMMITTEE</u> <u>Meets:</u> As needed <u>Location:</u> TBD Appointed Members of the City Council will serve in a liaison capacity. The Sister City relationships with Tamazula, Mexico and Fuyang, China was formed to foster understanding between these Cities and Riverbank and to engage in common efforts to promote the cultural understanding and awareness for the mutual good of each City. The Committees purpose is to facilitate and carry out these objectives.	No representatives until further notice.