

TABLE 1

SPECIAL-STATUS PLANT AND WILDLIFE SPECIES DOCUMENTED IN THE GREATER PROJECT VICINITY

Common Name	Scientific Name	Federal Status ¹	State Status ¹	CNPS List ²	Habitat	Likelihood of Occurrence in the Project Site
MAMMALS						
Western mastiff bat	<i>Eumops perotis californicus</i>	None	SC	N/A	Open, dry habitats with crevices in cliff faces, high buildings, trees and tunnels for roosting.	Unlikely: while there are no cliffs or notable rock outcrops, trees in the site may be used by this species for roosting. The nearest occurrence of western mastiff bat in the CNDDDB (2017) search area is approximately 5.5 miles northeast of the site.
AMPHIBIANS						
California tiger salamander	<i>Ambystoma californiense</i>	T	T	N/A	Breeds in seasonal water bodies such as deep vernal pools or stock ponds. Requires small mammal burrows for summer refugia.	Unlikely: there are no areas within or near the site that could provide breeding habitat for California tiger salamander and the site is not suitable for aestivation. The nearest occurrence of this species in the CNDDDB (2017) search area is approximately 4 miles northeast of the site. The site is not in designated critical habitat for California tiger salamander (USFWS, 2005a).
FISH						
Central Valley steelhead	<i>Oncorhynchus mykiss</i>	T	None	N/A	Riffle and pool complexes with adequate spawning substrates within Central Valley drainages.	Unlikely: there is no suitable aquatic habitat in or near the site for Central Valley steelhead. The nearest occurrence of Central Valley steelhead in the CNDDDB (2017) search area is in the Stanislaus River, approximately 0.5 miles northwest of the site. The Stanislaus River is also designated critical habitat for Central Valley steelhead (NOAA, 2005).
Hardhead	<i>Mylopharodon conocephalus</i>	None	SC	N/A	Clear, deep pools with sand and gravel bottoms in tributaries to the San Joaquin River and Sacramento River.	Unlikely: the Stanislaus River near the site provides suitable habitat for hardhead. The closest occurrence of hardhead in the CNDDDB (2017) is upstream along the Stanislaus River, approximately 4 miles northeast of the site.

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Common Name	Scientific Name	Federal Status ¹	State Status ¹	CNPS List ²	Habitat	Likelihood of Occurrence in the Project Site
INVERTEBRATES						
Vernal pool tadpole shrimp	<i>Lepidurus packardii</i>	E	None	N/A	Vernal pools and seasonally wet depressions within the Central Valley.	Unlikely: there are no vernal pools or seasonal wetlands in the site. The nearest occurrence of vernal pool tadpole shrimp in the CNDDDB (2017) search area is approximately 2 miles southwest of the site. The site is not within designated critical habitat for vernal pool tadpole shrimp (USFWS, 2005b).
Vernal pool fairy shrimp	<i>Branchinecta lynchi</i>	T	None	N/A	Vernal pools and seasonally inundated depressions in the Central Valley.	Unlikely: there are no vernal pools or seasonal wetlands in the site. The nearest occurrence of vernal pool fairy shrimp in the CNDDDB (2017) search area is approximate 2 miles southwest of the site. The site is not within designated critical habitat for any vernal pool shrimp species (USFWS, 2005b).
Valley elderberry longhorn beetle	<i>Desmocerus californicus dimorphus</i>	T	None	N/A	Elderberry shrubs in the Central Valley and surrounding foothills	Unlikely: no blue elderberry shrubs were observed in or adjacent to the site. The nearest occurrence of valley elderberry longhorn beetle in the CNDDDB (2017) search area is along the Stanislaus River, approximately 2 miles northwest of the site.

Notes:

¹ T= Threatened; E = Endangered; R = Rare; SC = Species of Special Concern per California Department of Fish and Wildlife.

² CNPS List 1B includes species that are rare, threatened, or endangered in California and elsewhere.

perotis californicus), California tiger salamander (*Ambystoma californiense*), Central Valley steelhead (*Oncorhynchus mykiss*), hardhead (*Mylopharodon conocephalus*), vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), and valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (Attachment B). Central Valley steelhead and hardhead, which occur in the Stanislaus River, are the only new species included in the CNDDDB since the 2006 search.

Of the wildlife species identified in the CNDDDB, Swainson's hawk and burrowing owl are the only species with potential to occur in the site on more than a transitory or very occasional basis. Both birds could potentially nest in or near the site in the future and both may forage in the site on occasion. Other special-status birds may fly over or forage in the area on occasion, but would not be expected to nest in or near the project site. The site does not provide suitable aquatic habitat for any type of fish or California tiger salamander. There are no blue elderberry shrubs in the site, precluding the potential occurrence of valley elderberry longhorn beetle. There are no vernal pools or seasonal wetlands in the site for vernal pool branchiopods (i.e., fairy and tadpole shrimp).

The site is not within designated critical habitat for California red-legged frog (USFWS, 2006), federally listed vernal pool shrimp or plants (USFWS, 2005a), California tiger salamander (USFWS, 2005b), valley elderberry longhorn beetle (USFWS, 1980), delta smelt (USFWS, 1994), or Central Valley steelhead (NOAA, 2005) (Attachment C).

Conclusions

- The body of the site is leveled formerly irrigated pasture that is no longer irrigated and is now vegetated with upland grasses and weeds. There are some notable oaks along the edge of the site and a few trees near the home in the northwest corner of the site.

- The only potentially jurisdictional Water of the U.S. in the site is an OLD drain along the south edge and along part of the east edge of the site. The jurisdictional status of the drain is not clear and there is no need to firmly establish the jurisdictional status of the drain. Pursuant to the Exemptions for Construction or Maintenance of Irrigation Ditches and Maintenance of Drainage Ditches Under Section 404 of Clean Water Act (ACOE, 2007), conversion of the drain to pipe is exempt from ACOE permit requirements.
- Due to a lack of suitable habitat, it is unlikely that special-status plants occur in the site.
- With the exception of Swainson's hawk and burrowing owl, no special-status wildlife species are expected to occur in or near the site on more than a very occasional or transitory basis.
- The site contains potential Swainson's hawk foraging habitat, however actual use of the site by foraging Swainson's hawks has not been documented. The large trees in the site are potentially suitable for nesting. Development of the site would result in a minor loss of potential Swainson's hawk foraging habitat and would contribute to a cumulative loss of Open Space and associated biological resource values.
- Due to the site location so far east in the valley and limited number of trees in the site, it is unlikely Swainson's hawks will in the site in the future. Pre-construction surveys for nesting Swainson's hawks within 0.25 miles of the project site are recommended if construction commences between March 1 and September 15. If active nests are found, a qualified biologist should determine the need (if any) for temporal restrictions on construction. The determination should utilize criteria set forth by CDFW (CDFG, 1994).

- Burrowing owls could nest in the site in the future if burrow habitat is available. Pre-construction surveys for burrowing owls are recommended if construction commences between February 1 and August 31. If occupied burrows are found, a qualified biologist should determine the need (if any) for temporal restrictions on construction. The determination should be pursuant to criteria set forth by CDFW (CDFG, 2012).
- The grasslands in the site could be used for nesting by other birds protected by the Migratory Bird Treaty Act of 1918 and/or Fish and Game Code of California. If vegetation removal and/or construction commences during the general avian nesting season (March 1 through July 31), a pre-construction survey for nesting birds is recommended. If active nests are found, work in the vicinity of the nest should be delayed until the young fledge.

We hope this information is useful. Please call me at (209) 745-1159 with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DSM', with a stylized flourish extending to the right.

Diane S. Moore, M.S.
Principal Biologist

References and Literature Consulted

ACOE (U.S. Army Corps of Engineers). 1987. Technical Report Y87-1. U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, MI.

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Sawyer & Keeler-Wolf. 1995. A Manual of California Vegetation. California Native Plant Society, Sacramento. California.

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USFWS. 1994. Final Critical Habitat for the Delta Smelt (*Hypomesus transpacificus*). Federal Register Vol. 59, No. 242, December 19, 1994, pp. 65256 – 65279.

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USFWS. 2005a. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander, Central Population; Final Rule. Federal Register Vol. 70, No. 162, August 23, 2005, pp. 49390 – 49458.

USFWS. 2005b. Part II, Department of the Interior, Fish and Wildlife Service. 50 CFR Part 17: Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon; Evaluation and Economic Exclusions from August 2003 Final Designation, Final Rule. Federal Register Vol. 70, No. 154, August 11.

USFWS. 2006. Part II, Department of the Interior, Fish and Wildlife Service. 50 CFR Part 17: Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for California Red-Legged Frog, and Special Rule Exemption Associated with Final Listing for Existing Routine Ranching Activities, Final Rule. Federal Register Vol. 71, No. 71, April 13.

Attachment A

Photographs



Formerly irrigated pasture in the south part of the site, looking north; 07/14/17.



Blackberry brambles along Central Avenue near the southwest corner of the site, looking north; 07/14/17.



Valley oaks along California Street in the southeast corner of the site, looking west; 07/14/17.



Existing home and outbuildings in the northwest corner of the site, looking southeast; 07/14/17.



Tailwater ditch along the east edge of the site, looking north from near California Street; 07/14/17.



Tailwater ditch along the south edge of the site, looking east from near Central Avenue; 07/14/17.

Attachment B

CNDDB Summary Report and Exhibits



Selected Elements by Scientific Name

California Department of Fish and Wildlife

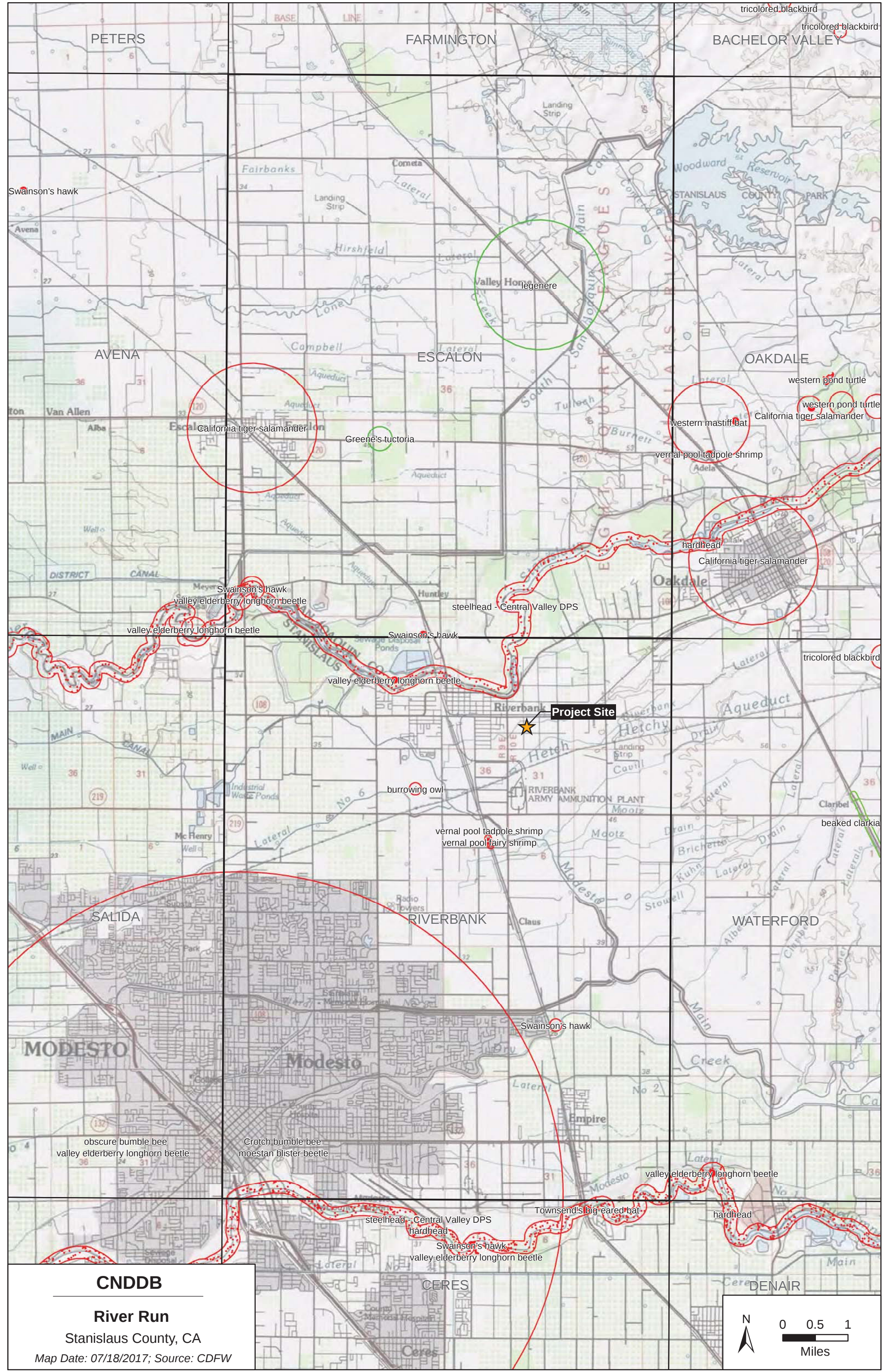
California Natural Diversity Database



Query Criteria: Quad(Riverbank (3712068)> OR Escalon (3712078))

Species	Element Code	Federal Status	State Status	Global Rank	State Rank	Rare Plant Rank/CDFW SSC or FP
<i>Ambystoma californiense</i> California tiger salamander	AAAAA01180	Threatened	Threatened	G2G3	S2S3	WL
<i>Athene cunicularia</i> burrowing owl	ABNSB10010	None	None	G4	S3	SSC
<i>Bombus caliginosus</i> obscure bumble bee	IIHYM24380	None	None	G4?	S1S2	
<i>Bombus crotchii</i> Crotch bumble bee	IIHYM24480	None	None	G3G4	S1S2	
<i>Branchinecta lynchi</i> vernal pool fairy shrimp	ICBRA03030	Threatened	None	G3	S3	
<i>Buteo swainsoni</i> Swainson's hawk	ABNKC19070	None	Threatened	G5	S3	
<i>Desmocerus californicus dimorphus</i> valley elderberry longhorn beetle	IICOL48011	Threatened	None	G3T2	S2	
<i>Eumops perotis californicus</i> western mastiff bat	AMACD02011	None	None	G5T4	S3S4	SSC
<i>Legenere limosa</i> legenere	PDCAM0C010	None	None	G2	S2	1B.1
<i>Lepidurus packardii</i> vernal pool tadpole shrimp	ICBRA10010	Endangered	None	G4	S3S4	
<i>Lytta moesta</i> moestan blister beetle	IICOL4C020	None	None	G2	S2	
<i>Mylopharodon conocephalus</i> hardhead	AFCJB25010	None	None	G3	S3	SSC
<i>Oncorhynchus mykiss irideus</i> steelhead - Central Valley DPS	AFCHA0209K	Threatened	None	G5T2Q	S2	
<i>Tuctoria greenei</i> Greene's tuctoria	PMPOA6N010	Endangered	Rare	G1	S1	1B.1

Record Count: 14



CNDDDB

River Run

Stanislaus County, CA

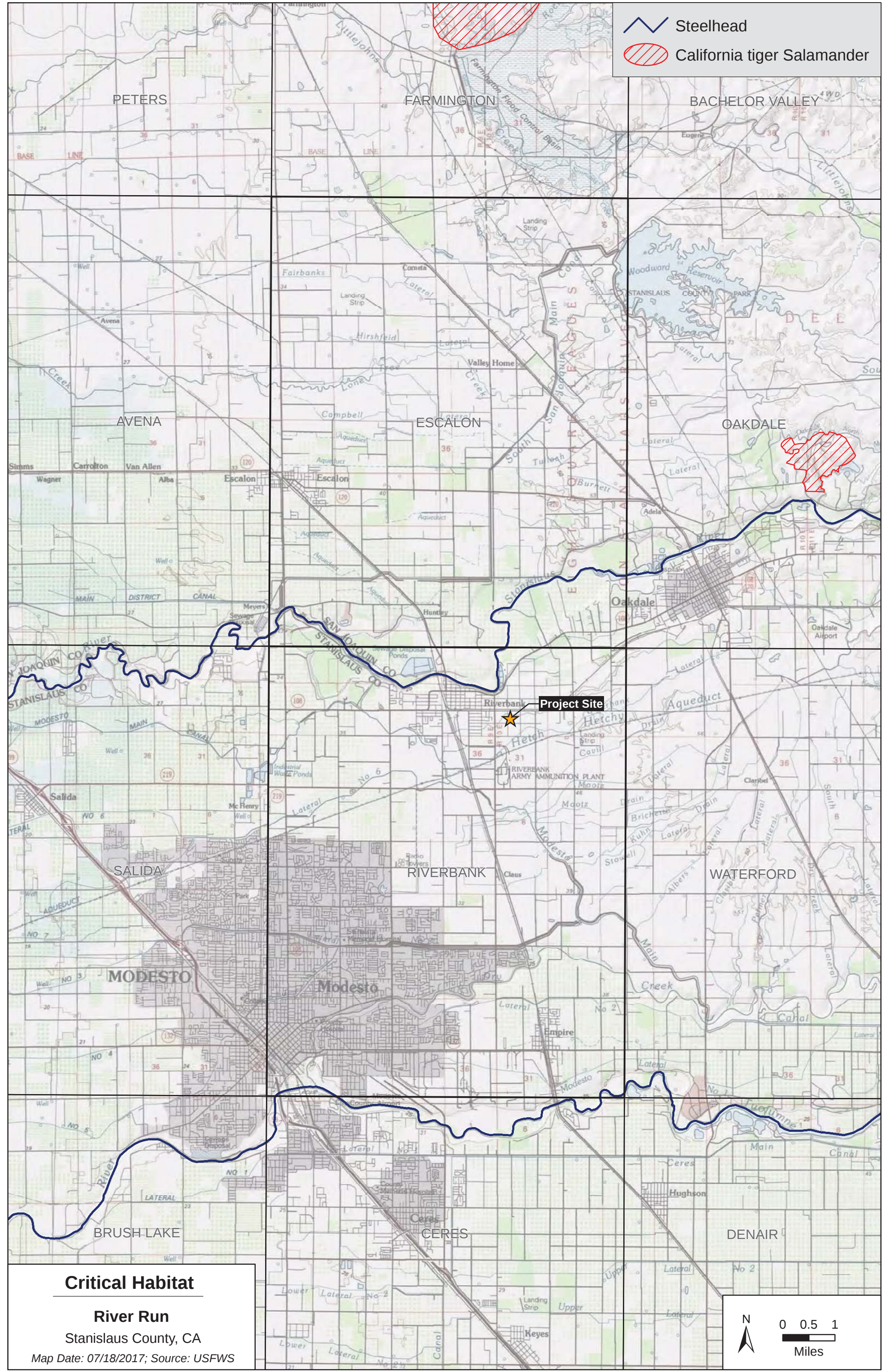
Map Date: 07/18/2017; Source: CDFW



0 0.5 1
Miles

Attachment C

Designated Critical Habitat



MOORE BIOLOGICAL CONSULTANTS

January 25, 2005

Mr. Wayne Bruns
Willow Equities LLC
3397 Lagoon Ave
Atwater, California 95301

Subject: BASELINE BIOLOGICAL RESOURCES INVENTORY AT THE 9 +/- ACRE "WHITE"
PARCEL SITE, RIVERBANK, CALIFORNIA

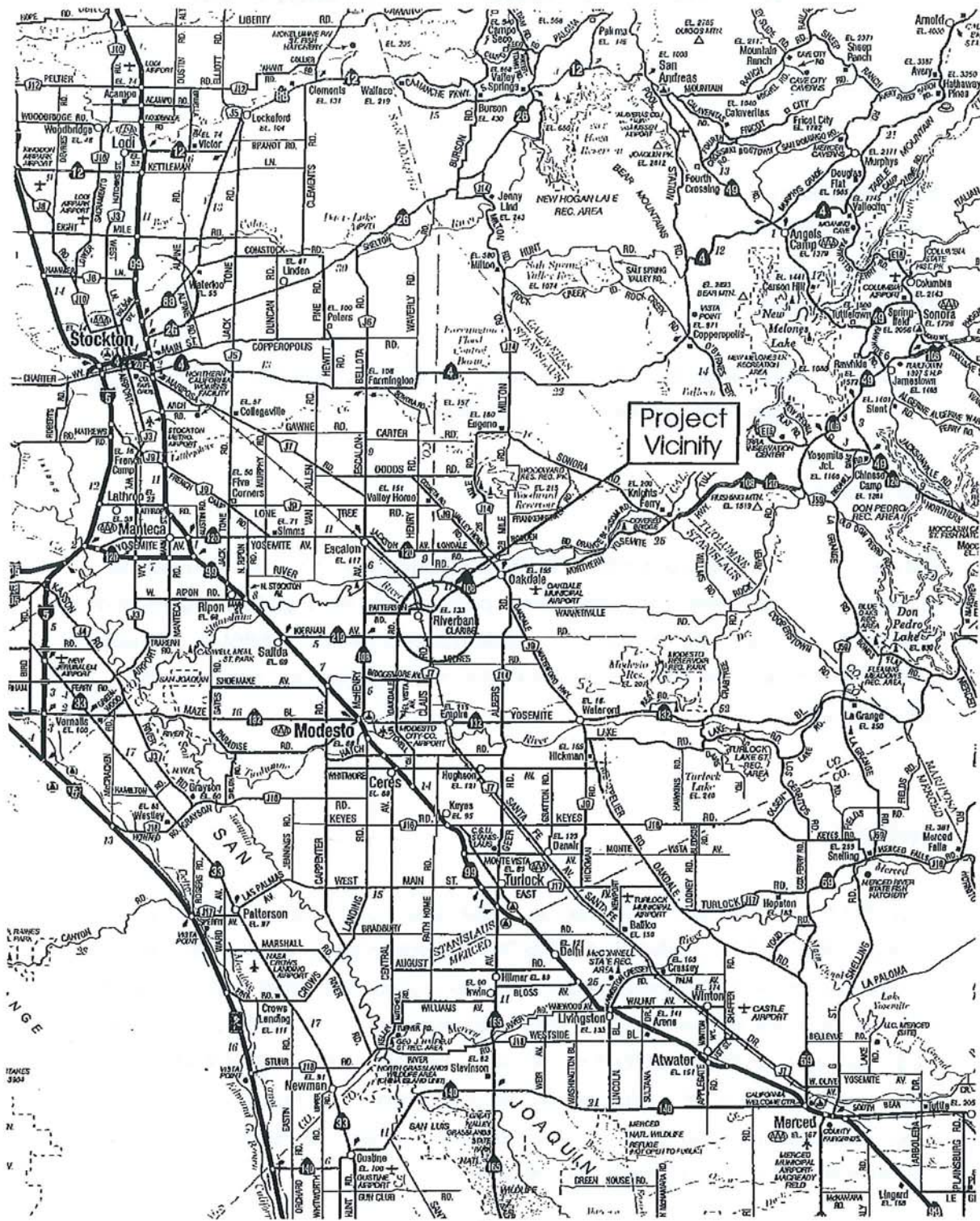
Dear Wayne:

Thank you for contracting with Moore Biological Consultants to conduct a baseline biological resources inventory of the subject property (Figures 1 and 2). The focus of our work was to conduct a site evaluation for wetlands and suitable habitat for or presence of sensitive species. This letter report details the methodology and results of our investigation.

Methods

Prior to the field survey, we conducted an updated search of California Department of Fish and Game's (CDFG) California Natural Diversity Database (CNDDDB, 2005). This information was used to identify wildlife and plant species that have been previously documented in the project vicinity or have the potential to occur based on suitable habitat and geographical distribution. Since the location of the project site is near the northern edge of the USGS 7.5-minute Riverbank topographic quadrangle, the CNDDDB search area encompassed both the Riverbank and Escalon quadrangles, an area of approximately 140 square miles surrounding the site.

The field survey was conducted on January 17, 2005. The survey consisted of walking throughout the site making observations of current habitat conditions and noting surrounding land use, general habitat types, and plant and wildlife species. We conducted a search for Jurisdictional Waters of the U.S. (a term that includes wetlands)



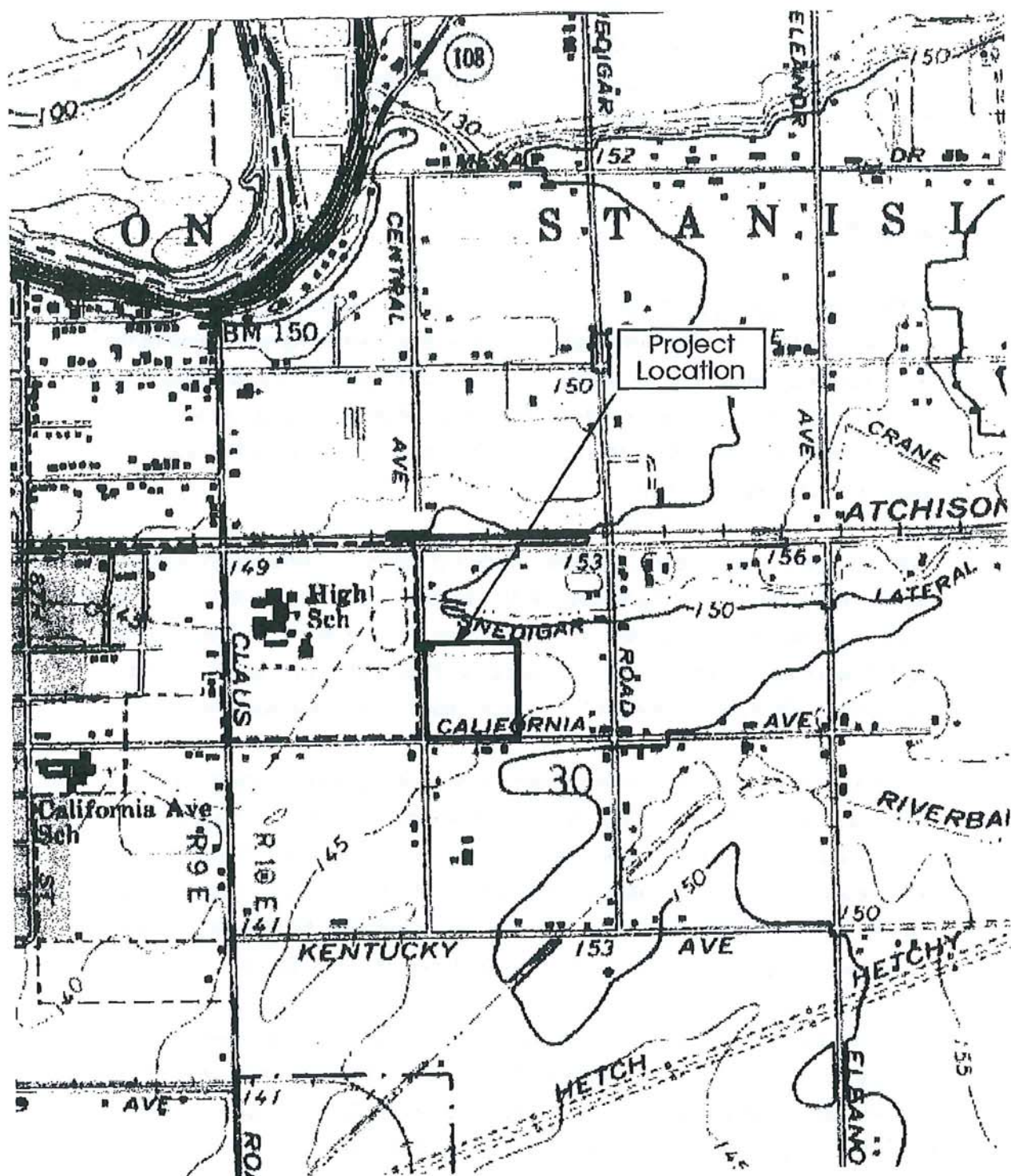
Scale: 1 Inch = 9 miles

Source: Calif. State Automobile Association

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FIGURE 1
PROJECT VICINITY



Scale: 1 inch = 1,000 feet

Source: USGS 7.5-minute Riverbank
topographic quadrangle

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FIGURE 2
PROJECT LOCATION

as defined by the U.S. Army Corps of Engineers (ACOE, 1987), sensitive species, and suitable habitat for sensitive species (e.g., elderberry shrubs, vernal pools, and potential nest trees for Swainson's hawk).

Results

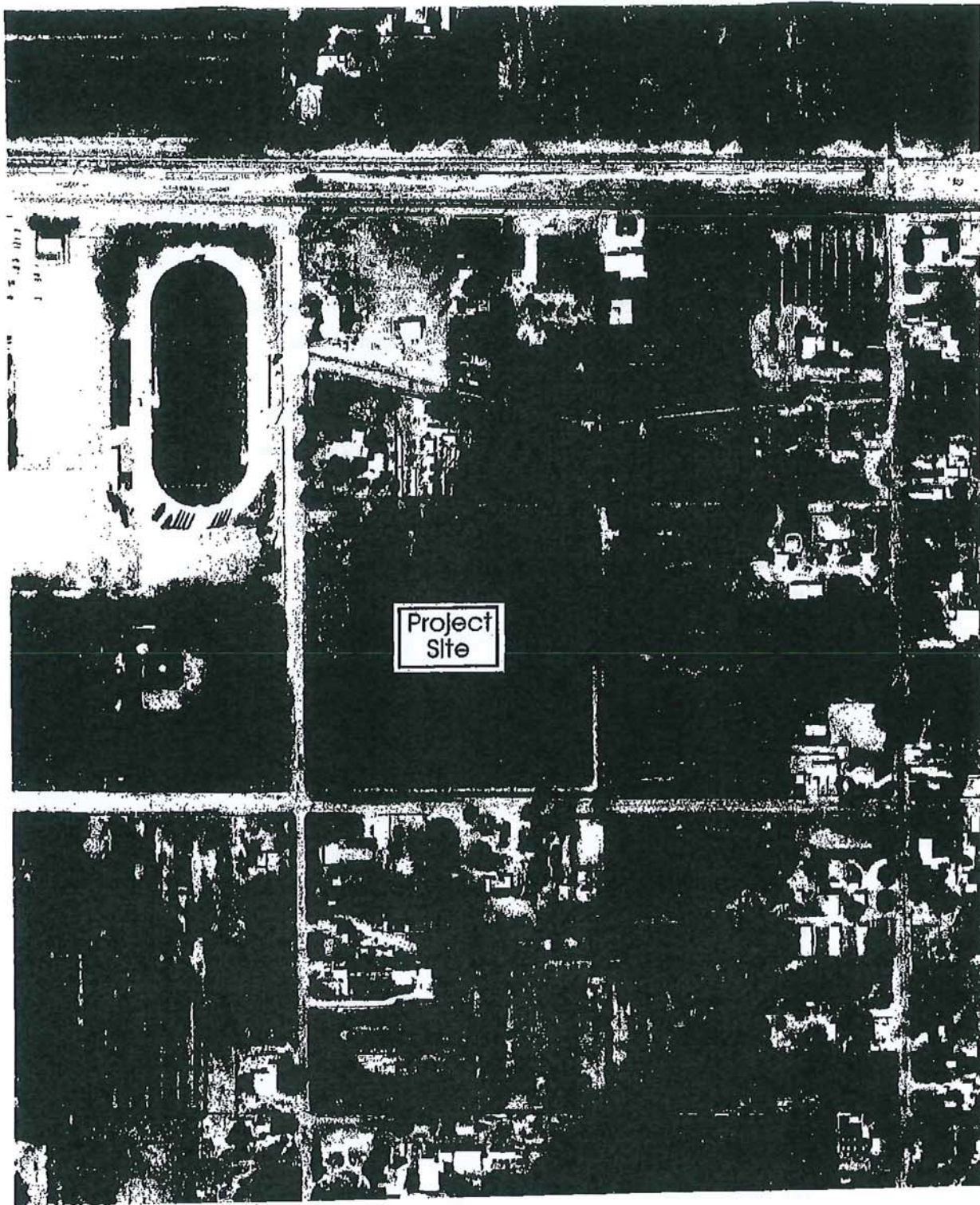
GENERAL SETTING: The project site is located east of the City of Riverbank, California (Figures 1 and 2). The site is within Section 30, Township 2 South, Range 10 East of the USGS 7.5-minute Riverbank topographic quadrangle (Figure 2). The site topography is flat due to past land leveling and the site is located at approximately 145 feet elevation. Surrounding land uses in this portion of Riverbank are primarily ranchettes with subdivisions fast approaching.

California Avenue bounds the site to the south and Central Avenue and a high school are located to the west of the site (Figure 3). There are ranchettes to the north, east, and south of the site. The site consists of a single home site and associated irrigated pasture. The irrigated pasture has ditches along portions of the north and east sides and the entire south side that are labeled "O.I.D. easement" on the assessor's map.

VEGETATION: The main body of the project site is irrigated pastures utilized for grazing horses and a single home site with associated ornamental trees and shrubs. Vegetation within the irrigated pastures consists of various native and non-native perennial species such as Dall's grass (*Paspalum dilatatum*), white clover (*Trifolium repens*), Bermuda grass (*Cynodon dactylon*) and deergrass (*Muhlenbergia rigens*). A complete list of plant species observed on-site is provided in Table 1.

There are a few large trees within the project site. Most of the on-site trees are associated with the home site and along the southern edge of the property; all of these trees are readily apparent in a recent aerial photograph (Figure 3). Some of the trees include a large valley oak (*Quercus lobata*), elm (*Ulmus*), and pecan (*Carya illinoensis*). We observed no blue elderberry (*Sambucus mexicana*) shrubs within or adjacent to the project site.

WILDLIFE: A limited number of wildlife species were observed during the recent survey. Some of the more common birds observed include house sparrow (*Passer*



Scale: 1 Inch = 300 feet

Source: WAC, Inc. (photo date: 9/18/00)

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FIGURE 3
AERIAL PHOTOGRAPH

TABLE 1
PLANT SPECIES OBSERVED DURING THE 2005 SURVEY

<i>Avena</i> sp.	oat
<i>Brassica rapa</i>	field mustard
<i>Bromus</i> sp.	brome sp.
<i>Capsella bursa var. pastoris</i>	shepherds purse
<i>Carduus pycnocephalus</i>	Italian thistle
<i>Carya illinoensis</i>	pecan
<i>Claytonia perfoliata</i>	miner's lettuce
<i>Cynodon dactylon</i>	Bermuda grass
<i>Cyperus</i> sp.	sedge sp.
<i>Dactylis glomerata</i>	orchard grass
<i>Erodium botrys</i>	filaree
<i>Ficus carica</i>	edible fig
<i>Hordeum murinum</i>	foxtall barley
<i>Lolium perenne</i>	perennial ryegrass
<i>Ludwigia peploides</i>	water primrose
<i>Malva neglecta</i>	common mallow
<i>Montia perfoliata</i>	miner's lettuce
<i>Paspalum dilatatum</i>	dallis grass
<i>Quercus lobata</i>	valley oak
<i>Rubus discolor</i>	Himalayan blackberry
<i>Rumex crispus</i>	curly dock
<i>Raphanus sativus</i>	wild radish
<i>Silybum marianum</i>	milk thistle
<i>Sonchus oleraceus</i>	sow thistle
<i>Trifolium</i> sp.	clover
<i>Ulmus</i>	elm
<i>Urtica dioica</i>	stinging nettle
<i>Xanthium strumarium</i>	cocklebur

domesticus), turkey vulture (*Cathartes aura*), killdeer (*Charadrius vociferus*), yellow-billed magpie (*Pica nuttalli*), and red-winged blackbird (*Agelaius phoeniceus*). All of these are species commonly found in rural and semi-rural habitats in the greater project vicinity. Table 2 is a list of bird species observed while at the project site.

There are several potential nest trees within the project site that are suitable for nesting raptors and other protected migratory birds, including Swainson's hawk (*Buteo swainsoni*). No nesting raptors were observed during the recent survey. This negative survey result would be expected due to the time of year that this survey was conducted (i.e. at the extreme tail end of the raptor nesting season). Given the size of the site, the presence of nesting habitat (large trees) within the site, as well as the irrigated pasture for foraging, it is likely one or more pairs of raptors, plus a variety of songbirds, nest in trees at the site each year.

A limited variety of mammals common to agricultural and semi-rural areas occur within the project site. Evidence of ground squirrels (*Spermophilus beecheyi*) was observed while at the site. Striped skunk (*Mephitis mephitis*) and opossum (*Didelphis virginiana*) are expected to occur at the site. A number of species of small rodents including mice (*Mus musculus*, *Reithrodontomys megalotis*, and *Peromyscus maniculatus*) and voles (*Microtus californicus*) also are likely to occur.

Based on habitat types present, a limited variety of amphibians and reptiles may use habitats within the project site. The project site does contain suitable habitat for species such as Gilbert's skink (*Eumeces gilberti*) and western fence lizard (*Sceloporus occidentalis*), although none were observed.

WATERS OF THE U.S AND WETLANDS: Waters of the U.S., including wetlands, are broadly defined under 33 Code of Federal Regulations (CFR) 328 to include navigable waterways, their tributaries, and adjacent wetlands. State and federal agencies regulate these habitats and Section 404 of the Clean Water Act requires that a permit be secured prior to the discharge of dredged or fill materials into any waters of the U.S., including wetlands. Both CDFG and ACOE have jurisdiction over modifications to riverbanks, lakes, stream channels and other wetland features.

Although definitions vary to some degree, wetlands are generally considered to be areas that are periodically or permanently inundated by surface or ground water, and

TABLE 2
WILDLIFE SPECIES OBSERVED DURING THE 2005 SURVEY

Birds

Turkey vulture	<i>Cathartes aura</i>
Ring-necked pheasant	<i>Phasianus colchicus</i>
Killdeer	<i>Charadrius vociferus</i>
Western scrub jay	<i>Aphelocoma coerulescens</i>
Yellow-billed magpie	<i>Pica nuttalli</i>
American crow	<i>Corvus brachyrhynchos</i>
American robin	<i>Turdus migratorius</i>
European starling	<i>Sturnus vulgaris</i>
Red-winged blackbird	<i>Agelaius phoeniceus</i>
Western meadowlark	<i>Sturnella neglecta</i>
House finch	<i>Carpodacus mexicanus</i>
House sparrow	<i>Passer domesticus</i>

support vegetation adapted to life in saturated soil. Jurisdictional wetlands are vegetated areas that meet specific vegetation, soil, and hydrologic criteria defined by the ACOE *Wetlands Delineation Manual* (ACOE, 1987). Waters of the U.S. are drainage features or water bodies as described in 33 CFR 328.4. ACOE holds sole authority to determine the jurisdictional status of waters of the U.S., including wetlands.

Jurisdictional wetlands and Waters of the U.S. include, but are not limited to, perennial and intermittent creeks and drainages, lakes, seeps, and springs; emergent marshes; riparian wetlands; and seasonal wetlands. Wetlands and Waters of the U.S. provide critical habitat components, such as nest sites and a reliable source of water, for a wide variety of wildlife species.

There are a few potential waters of the U.S., including wetlands, located in the project site that may fall under the jurisdiction of ACOE and CDFG. All of these potential waters of the U.S. are well-developed irrigation canals located along the edges of the site. Although they may be entirely created and hydrologically manipulated, most of these

on-site irrigation laterals appear to have the potential to fall under ACOE jurisdiction due to connectivity with creeks or rivers. ACOE has recently asserted jurisdiction over irrigation ditches in situations where water flows out of Jurisdictional Waters of the U.S. via gravity, is conveyed in the ditches, and has an opportunity to return to Jurisdictional Waters of the U.S. As ACOE holds the authority to determine jurisdiction or non-jurisdiction, a formal wetland delineation, based on current regulations of ACOE, would need to be conducted to firmly establish the extent of Jurisdictional Waters of the U.S., including wetlands, on the project site.

All of the on-site irrigation laterals derive water from the Snedigar Lateral, which flows in an east to west direction several hundred feet north of the site (see Figures 2 and 3). Water in Snedigar Lateral is derived from the Stanislaus River, at a diversion in the foothills way east of the site. As excess water in the Snedigar Lateral is eventually returned to the Stanislaus River (to the west of the site), the Snedigar Lateral is believed to fall under ACOE jurisdiction. The potential for the on-site Snedigar Lateral "spur ditches" to be jurisdictional depends on whether the water has the opportunity to return to Jurisdictional Waters of the U.S. downstream (i.e., west) of the site. As the ditch along the north edge of the site terminate on-site, it is likely non-jurisdictional. As water in the ditches along the east and south edges of the site is conveyed off-site to the west to an unknown location, it's potential for being jurisdictional is less clear. If the water does in fact have an opportunity to return to Jurisdictional Waters of the U.S. downstream (i.e., west) of the site, these on-site ditches along the east and south edges of the site may be jurisdictional.

SENSITIVE SPECIES: The likelihood of occurrence of listed, candidate, and other sensitive species in the project site is generally considered low. Table 3 provides a summary of the listing status and habitat requirements of sensitive species that have been documented in the project vicinity or for which there is potentially suitable habitat in the project vicinity. This table also includes an assessment of the likelihood of occurrence of each of these species at the project site. The evaluation of the potential for occurrence of each species is based on the distribution of regional occurrences (if any), habitat suitability, and field observations.

While the project site may have provided habitat for a subset of the sensitive species listed in Table 3 at some time in the past, agriculture and development have substantially modified natural habitats in the project vicinity. Through reviewing Table 3,

TABLE 3

SPECIAL-STATUS PLANT AND WILDLIFE SPECIES DOCUMENTED OR POTENTIALLY-OCCURRING IN THE PROJECT VICINITY

Common Name	Scientific Name	Federal Status ¹	State Status ²	CNPS List ³	Habitat	Potential for Occurrence in Project Site
PLANTS						
Legenere	<i>Legenere limosa</i>	None	None	1B	Vernal pools.	None: there are no vernal pools within the project site. The nearest occurrence of this species is located approximately 6 miles north of the project site (CNDDDB, 2005). This occurrence is presumed extirpated.
Greene's tuctoria	<i>Tuctoria greenei</i>	E	R	1B	Vernal pools.	None: there are no vernal pools within the project site. The nearest occurrence of this species is located approximately 4 miles northwest of the project site (CNDDDB, 2005). This occurrence is presumed extirpated.
WILDLIFE						
Swainson's hawk	<i>Buteo swainsoni</i>	None	T	N/A	Breeds in stands of tall trees in open areas. Requires adjacent suitable foraging habitats such as grasslands or alfalfa fields supporting rodent populations.	Low: the site contains potential Swainson's hawk nesting as well as foraging habitat, although use of the site by Swainson's hawks has not been documented. There are also suitable nest trees surrounding the project site. The nearest occurrence is located approximately 4 miles northwest of the site (CNDDDB, 2005).
Burrowing owl	<i>Athene cunicularia</i>	None	SC	N/A	Found in open, dry annual or perennial grasslands, deserts and scrublands characterized by low-growing vegetation, subterranean nester, dependent upon burrowing mammals.	Very low: no owls were observed at the project site. Very few ground squirrel burrows were observed at the site. The nearest occurrence is documented approximately 2 miles south of project site (CNDDDB, 2005).

TABLE 3

SPECIAL-STATUS PLANT AND WILDLIFE SPECIES DOCUMENTED OR POTENTIALLY-OCCURRING IN THE PROJECT VICINITY

Common Name	Scientific Name	Federal Status ¹	State Status ²	CNPS List ³	Habitat	Potential for Occurrence in Project Site
California tiger salamander	<i>Ambystoma californiense</i>	T	SC	N/A	Seasonal stock ponds and vernal pools that pond water well into spring required for breeding.	None: there is no suitable breeding habitat for this species within or adjacent to the project site. The nearest occurrence of this species is located approximately 6 miles northwest of the project site (CNDDDB, 2005).
Vernal pool tadpole shrimp	<i>Lepidurus packardii</i>	E	None	N/A	Vernal pools.	None: there are no vernal pools in the project site. The closest occurrence of vernal pool tadpole shrimp in the CNDDDB (2005) is located approximately 2 miles south of the project site. The site is not within an area designated by the U.S. Fish & Wildlife Service as critical habitat for vernal pool species (USFWS, 2004c)
Valley elderberry longhorn beetle	<i>Desmoceris californicus dimorphus</i>	T	None	N/A	Elderberry shrubs, usually in Central Valley riparian habitats.	None: there are no elderberry shrubs within the project site. The CNDDDB (2005) lists a few occurrences approximately 2 miles northwest of the project site.

¹ T = Threatened; E = Endangered.² T = Threatened; R = Rare; SC=State of California Species of Special Concern.

it becomes apparent that the likelihood of occurrence of listed, candidate, and other sensitive species in the project site is considered low to none. No sensitive species were observed during the recent survey and the irrigated pastures provide marginally suitable habitat for a very limited subset of these species.

SENSITIVE PLANTS: Two sensitive plants are identified in the CNDDDB (2005) search area. These species are *Legenere* (*Legenere ilmosa*) and Greene's tuctoria (*Tuctoria greenei*), both of which are found in vernal pools. Sensitive plants generally occur in relatively undisturbed areas and are largely found within unique vegetation communities and/or habitats such as vernal pools, and well-developed riparian wetlands, which is not the scenario within the project site. The leveled irrigated pasture provides no suitable habitat for sensitive plants and consequently, the likelihood of occurrence of sensitive plants within the site is considered very low to none.

SENSITIVE WILDLIFE: The potential for intensive use of habitats within the project site by sensitive wildlife species is considered low. Swainson's hawk, burrowing owl, valley elderberry longhorn beetle (*Desmoceris californicus dimorphus*), California tiger salamander (*Ambystoma californiense*) and vernal pool tadpole shrimp (*Lepidurus packardii*) are the five sensitive wildlife species identified in the CNDDDB (2005) query. While the project site and surrounding areas may have provided habitat for a variety of sensitive wildlife species in the past, prior leveling of the site and development on surrounding parcels has substantially modified natural habitats within the greater project vicinity.

Of the sensitive species listed in Table 3, Swainson's hawk and burrowing owl are the only species with what is considered at least some potential to occur near the site on more than an occasional or transitory basis and are discussed further below. Additionally, while the likelihood of on-site occurrence of California tiger salamander is considered remote, this species has been recently listed as threatened by U.S. Fish & Wildlife Service (USFWS) and is discussed below for the sake of completeness.

SWAINSON'S HAWK: Swainson's hawk is listed as Threatened by CDFG and is a Federal Species of Special Concern. In the Central Valley, this hawk typically nests in oak or cottonwood trees in or near riparian habitats. Swainson's hawks prefer nesting sites that provide sweeping views of nearby foraging grounds consisting of grasslands, irrigated pasture, alfalfa, hay, and wheat crops. Most Swainson's hawks are migratory, wintering

In Mexico and breeding in California and elsewhere in the western United States. The raptor generally arrives in the Central Valley in mid-March, and begins courtship and nest construction immediately upon arrival at the breeding sites. The young fledge in early July, and most Swainson's hawks leave their breeding territories by late August to early September.

The CNDDDB (2005) contains two records of nesting Swainson's hawk in the greater project vicinity, but none in or immediately adjacent to the project site. The nearest occurrence of a nesting pair reported in the CNDDDB is located approximately 4 miles northwest of the site. There are suitable nest trees within and surrounding the project site, as well as areas of grasslands and/or annual cropland that Swainson's hawks could use for foraging. The likelihood of Swainson's hawks nesting in this area in the future is considered generally low but can not be precluded at this time.

BURROWING OWL: Burrowing owls are a year-long resident in a variety of grasslands as well as scrublands that have a low density of trees and shrubs with low growing vegetation; burrowing owls which nest in the Central Valley may winter elsewhere. The primary habitat association of the burrowing owl is burrows for nesting. The owl usually nests in old ground squirrel burrows, although they have been known to dig their own burrows in softer soils. In urban areas, burrowing owls often utilize artificial burrows including pipes, culverts, and piles of concrete pieces. This semi-colonial owl breeds from March through August, and is most active while hunting during dawn and dusk.

No burrowing owls were observed in the project site during the recent survey and the intensity of irrigation substantially reduces the likelihood of owls potentially using the site for nesting. While there are a few suitable ground squirrel burrows along the edges of the fields, none of these burrows had any evidence of burrowing owl occupancy (i.e. whitewash, feathers and/or pellets). Within the search area, the CNDDDB (2005) contains only one record of nesting burrowing owls, approximately two miles south of the site. Due to limited regional occurrences of this species and limited on-site habitat, the likelihood of burrowing owls nesting on-site in the future is considered very low.

CALIFORNIA TIGER SALAMANDER: California tiger salamander is a State of California Species of Special Concern and was recently listed as threatened by the USFWS under the Federal Endangered Species Act (USFWS, 2004a). In August 2004, USFWS also proposed rules for designated critical habitat for the California tiger salamander

(USFWS, 2004b). Review of the USFWS map of proposed critical habitat for California tiger salamander indicates that the project site is not within a proposed Critical Habitat Unit for California tiger salamander (USFWS, 2004c).

California tiger salamanders require stock ponds without game fish or deep, large vernal pools, which hold water well into the spring (i.e., April or May) for breeding (Jennings and Hayes, 1994). Following breeding, the young disperse across upland habitats up to 1.5 miles and spend the summer months in subterranean refugia such as small mammal burrows. Relatively deeper vernal pools in the greater project vicinity serve as potential breeding habitat for this species and the nearby grasslands contain burrows and cracks suitable for over-summering.

There are no vernal pools within the site that could provide breeding habitat for California tiger salamander. While stock ponds in areas surrounding the site could conceivably provide a hydrologic regime suitable for breeding, the irrigated pastures and orchards both on-site and in surrounding areas do not provide suitable summer refugia. The combined lack of observations of this species in the vicinity (CNDDDB, 2004) and lack of suitable over-summering habitat in or near the site renders it extremely unlikely that California tiger salamanders would be found within or immediately adjacent to the site. The closest occurrence of California tiger salamanders is approximately 6 miles north west of the project site.

Conclusions and Recommendations

- The likelihood of occurrence of listed, candidate, and other sensitive plants within the site is considered remote.
- The only potential waters of the U.S., including wetlands that we observed within the project site are the well-developed irrigation canals located along the edges of the site. Although they may be entirely created and hydrologically manipulated, some of these on-site irrigation laterals appear to have the potential to fall under ACOE jurisdiction due to connectivity with creeks or rivers. However, as only the ACOE holds the authority to determine jurisdiction or non-jurisdiction, a formal wetland delineation, based on current regulations of ACOE, would need to be

conducted and submitted to ACOE to firmly establish the extent of jurisdictional Waters of the U.S., including wetlands (if any), within the project site.

- The potential need for Willow Equities LLC to construct any off-site improvements (roads, utilities, outfalls) that may involve work in waters of the U.S. is not known.
- It is recommended that Willow Equities LLC seek confirmation from the CEQA Lead Agency regarding the need, if any, for off-site improvements. If any off-site improvements involve work within areas that are determined to be jurisdictional waters of the U.S., impacts should be avoided to the maximum extent practicable through thoughtful project design. If fill (i.e. utility lines, structures, culverts, road crossings, outfall structures, etc.) is to be placed within jurisdictional waters of the U.S., including wetlands, wetland permits and/or certification may be required from several agencies including ACOE, CDFG, and Regional Water Quality Control Board.
- The site contains potential Swainson's hawk foraging habitat as well as nesting habitat, although use of the site by foraging Swainson's hawks has not been documented. The project will result in a minor loss of potential Swainson's hawk foraging habitat and would contribute to a cumulative loss of Open Space and associated biological resource values.
- Pre-construction surveys for nesting Swainson's hawks within 0.25 miles of the project site and burrowing owls within 250 feet of the site should be conducted for construction activities between March 1 and September 15 (for hawks) and February 1 through August 31 (for owls). If active nests are found, a qualified biologist should determine the need (if any) for temporal restrictions on construction. These determination(s) should be made pursuant to criteria set forth by CDFG (1994) and/or CDFG (1995).
- On-site trees could be used by nesting raptors and other protected birds. Any trees that need to be removed to facilitate future development

should be felled outside of the general bird nesting season (February 1 through August 31) or a nesting bird survey should be conducted immediately prior to tree removal. If active nests are found, tree felling should be delayed until the young have fledged.

- We observed no other outstanding wetlands, sensitive species, or biological issues of concern within the project site.

Thank you, again, for asking Moore Biological Consultants to assist with this project. Please feel free to call me at (209) 365-6828 with any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Moore", with a stylized flourish at the end.

Diane S. Moore, M.S.
Principal Biologist

References

ACOE (U.S. Army Corps of Engineers). 1987. Technical Report Y87-1. U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, MI.

CDFG (California Department of Fish and Game). 1994. Staff Report regarding Mitigation for Impacts to Swainson's Hawks (*Buteo Swainsoni*) in the Central Valley of California. November.

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CNDDDB (California Natural Diversity Database). 2005. California Department of Fish and Game's Natural Heritage Program, Sacramento, California.

Sawyer, J.O. and T. Keeler-Wolf. 1995. A Manual of California Vegetation. California Native Plant Society, Sacramento, California.

USFWS. 2004a. Final Rule: Determination of Threatened Status for the California Tiger Salamander. Federal Register vol. 69, No. 149, August 4, 2004, pp. 47212 - 47248.

USFWS. 2004b. Proposed Rules for Designated Critical Habitat for the California Tiger Salamander. Federal Register vol. 69, No. 153, August 10, 2004, pp. 48570 - 48649.

USFWS. 2004c. U.S. Fish & Wildlife Service, Sacramento Fish and Wildlife Office Critical Habitat Maps. "http://sacramento.fws.gov/es/crit_hab-maps.htm"

Attachment 6

**River Run Subdivision
General Plan Amendment 01-2016
Rezone 01-2016
Tentative Subdivision Map 01-2016**

Mitigated Negative Declaration

(State Clearinghouse No. 2017102058)

Mitigation Monitoring Program

Prepared for:

City of Riverbank

Prepared by:



November 2017

Mitigation Monitoring Program

Mitigated Negative Declaration

River Run Subdivision

Introduction

Section 15097 of the California Environmental Quality Act (CEQA) Guidelines requires all public agencies to establish a monitoring or reporting program for projects approved by a public agency whenever approval involves the adoption of either specified environmental findings related to environmental impact reports, or a “mitigated negative declaration.” The City of Riverbank, acting as the Lead Agency, has adopted a Mitigated Negative Declaration for the River Run Subdivision Project (hereinafter referred to as the “Project”). In accordance with Section 15097 of the CEQA Guidelines, the following is a Mitigation Monitoring Program (MMP) for the Project.

This MMP is intended to be utilized by the City of Riverbank to ensure compliance with the mitigation measures during implementation of the Project. The mitigation measures identified in this MMP were developed as part of the Mitigated Negative Declaration process for the Project.

Mitigation is defined by CEQA as a measure which:

- Avoids the impact altogether by not taking a certain action or parts of an action;
- Minimizes impacts by limiting the degree or magnitude of the action and its implementation;
- Rectifies the impact by repairing, rehabilitating, or restoring the impacted environment;
- Reduces or eliminates the impact over time by preservation and maintenance operations during the life of the project; and,
- Compensates for the impact by replacing or providing substitute resources or environments.

The intent of the MMP is to ensure the effective implementation and enforcement of the adopted mitigation measures identified in the Project’s Mitigated Negative Declaration.

The following MMP Table identifies each mitigation measure, the monitoring action for the mitigation measure, the responsible party for the monitoring action, and the timing of the monitoring action.

Table I-1

Mitigation Monitoring Program for the River Run Subdivision Project

Mitigation Measure	Implementing Responsibility	Timing	Oversight of Implementation
Air Quality: Mitigation Measure AQ-1: During construction, the following basic control measures shall be incorporated at the construction/project site. • All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per days. • All haul trucks transporting soil, sand, or other loose material off-site shall be covered. • 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. • All vehicle speeds on unpaved roads shall be limited to 15 mph. • 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 binder are used. • Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxic control measure Title 13, Section 2485 of California Code of Regulation [CCR]). Clear signage shall be provided for			
	Project Applicant	During Project Construction	City of Riverbank, Development Services, and San Joaquin County Valley Air Pollution Control District (SJVAPCD)

construction workers at all access points. • 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. • 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.			
<u>Mitigation Measure AQ-2:</u> Applicant shall comply with San Joaquin Valley Air Pollution Control District's Rule 9510 Indirect Source Review.	Project Applicant	Prior to Building Permit Issuance	City of Riverbank, Development Services, and San Joaquin County Valley Air Pollution Control District (SJVAPCD)
Biological Resources:			
<u>Mitigation Measure BIO-1:</u> Pre-construction surveys for nesting Swainson's hawks within 0.25 of the project site are recommended if construction commences between March 1 and September 15. If active nests are found, a qualified biologist should determine the need (if any) for temporal restrictions on construction. The determination should utilize criteria set forth by CDFW (CDFG, 1994).	Project Applicant	Prior to and During Project Construction	City of Riverbank, Development Services
<u>Mitigation Measure BIO-2:</u> Pre-construction surveys for burrowing owls are recommended if construction commences between February 1 and August 31. If occupied burrows are found, a qualified biologist should determine the need (if any) for temporal restrictions on construction. The determination should be pursuant to criteria set forth by CDFW (CDFG, 2012).	Project Applicant	Prior to and During Project Construction	City of Riverbank, Development Services

Mitigation Measure BIO-3: If vegetation removal and/or construction commences during the general avian nesting season (March 1 through July 31), a pre-construction survey for nesting birds is recommended. If active nests are found, work in the vicinity should be delayed until the young fledge.	Project Applicant	Prior to and During Project Construction	City of Riverbank, Development Services
Mitigation Measure BIO-4: On-site trees could be used by nesting raptors and other protected birds. Any trees that need to be removed to facilitate future development should be felled outside of the general bird nesting season (February 1 through August 31) or a nesting bird survey should be conducted immediately prior to tree removal. If active nests are found, tree felling should be delayed until the young have fledged.	Project Applicant	Prior to and During Project Construction	City of Riverbank, Development Services
Cultural Resources:			
Mitigation Measure CUL-1: 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.	Project Applicant	During Construction	City of Riverbank, Development Services

Geology and Soils:			
Mitigation Measure GEO-1: 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.	Project Applicant	Submitted with project Improvement Plans	City of Riverbank, Development Services
Hydrology and Water Quality:			
Mitigation Measure HYDRO-1: 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: 1. 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); 2. Where not otherwise permitted by the Regional Water Quality Control Board, all non-stormwater discharges are identified and eliminated; and 3. 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.	Project Applicant	Prior to and During Project Construction	City of Riverbank, Development Services

<u>Mitigation Measure HYDRO-2:</u> 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: 1. An inventory and accounting of existing and proposed impervious areas. 2. 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. 3. 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. 4. 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	Project Applicant	Prior to and During Project Construction	City of Riverbank, Development Services
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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.			
Noise:			
<u>Mitigation Measure NOISE-1:</u> 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: • All internal combustion engine-driven equipment shall be equipped with mufflers that are in good condition and appropriate for the equipment. • “Quiet” models of air compressors and other stationary noise sources shall be used, where technology exists. • Stationary noise-generating equipment shall be located as far as feasible from sensitive receptors (dwelling and Riverbank High School). • Unnecessary idling of internal combustion engines shall be prohibited. • 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). • Construction-related traffic shall be routed along major roadways (Claus Road and Patterson Road) and as far as feasible from sensitive receptors. • 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”	Project Applicant	Prior to and During Construction	City of Riverbank, Development Services

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. • 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. All of the above measures shall be included in the contract specifications that shall be reviewed and approved by the City of Riverbank Development Services Department prior to the start of construction. The above measures would reduce noise generated by the construction of the project to the extent feasible for the project's size.			
Noise:			
<u>Mitigation Measure PUBLIC-1:</u> Prior to recording the "Final Map" or issuance of any building permits within the proposed subdivision, the applicant/project developer will be required to annex into "Community Facilities District" (CFD) No. 2016-01 for operational services with the Riverbank Police Department (Stanislaus County Sheriff).	Project Applicant	Prior to recording the Final Map or issuance of any Building Permits	City of Riverbank, Development Services

Transportation/Traffic:			
Mitigation Measure TRANS-1: Although construction impacts are expected to be temporary, development of a construction management plan would reduce potential for construction conflicts with other roadway users. The project applicant shall prepare a construction management plan for review and approval by the City of Riverbank prior to any ground disturbing activity. The plan shall include: • A project staging plan to maximize on-site storage of materials and equipment. • A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak hours; lane closure proceedings; signs, cones and other warning devices for drives; and designation of construction access routes. • Permitted construction hours. • Location of construction staging. • Identification of parking areas for construction employees, site visitors, and inspectors to minimize potential impacts on adjacent residences/properties. • Provisions for street sweeping to remove construction related debris on public streets. Implementation of the construction management plan would reduce the temporary construction traffic impact to a less than significant level.	Project Applicant	Prior to and During Construction	City of Riverbank, Development Services

**CITY OF RIVERBANK
PLANNING COMMISSION
STAFF REPORT**

Agenda Item No. 3.2

November 21, 2017

APPLICATION:	Development Agreement 01-2017 and Conditional Use Permit 04-2017 – Flavors - 2213 Patterson Road (APN: 075-026-044). The Project consists of a Development Agreement by and between the City of Riverbank and PACAFI Cooperative, Inc., a California cooperative corporation doing business as Flavors and a Conditional Use Permit.
LOCATION:	2213 Patterson Road APN 075-026-044.
GENERAL PLAN:	Community Commercial (C/C)
ZONING:	General Commercial (C2)
ENVIRONMENTAL DETIRMINATION:	The proposed project qualifies for a categorical exemption pursuant to Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility that will not have a significant effect on the environment.
PROJECT PLANNER:	Donna M. Kenney, Planning and Building Manager
RECOMMENDATION:	Adopt Planning Commission Resolution No. 2017-025 recommending that the City Council adopt an Ordinance approving a development agreement by and between the City of Riverbank and PACAFI Cooperative, Inc., a California cooperative corporation doing business as Flavors and adopt Planning Commission Resolution No. 2017-026 approving a Conditional Use Permit for Flavors.

I. EXECUTIVE SUMMARY:

Prior to commencing a cannabis dispensary business, Flavors must obtain a Development Agreement pursuant to Riverbank Municipal Code section 120.12. Proposed Resolution 2017-025 recommends the City Council adopt an Ordinance approving a development agreement by and between the City of Riverbank ("City") and PACAFI Cooperative, Inc., a California cooperative corporation doing business as Flavors (collectively "Flavors"). In addition, Section 2.5 of the Development Agreement states that Flavors must obtain a Conditional Use Permit prior to development as well. With Proposed Resolution 2017-026, the Planning Commission approves the Conditional Use Permit.

II. BACKGROUND:

On October 9, 2015, Governor Brown signed 3 bills into law (AB 266, AB 243, and SB 643), collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA established the state's first licensing system for commercial medicinal cannabis activity by qualified patients and their primary care givers. MCRSA also preserved local control of these businesses by requiring that a medicinal cannabis business obtain a local permit in order to operate.

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

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

Over several months the City Council participated in workshops concerning new cannabis regulations applicable to commercial and personal cultivation, warehousing, manufacturing, retail sales, and testing cannabis. Upon the conclusion of the workshops, the City Council adopted Ordinance No. 2017-007 on August 22, 2017, permitting certain types of cannabis businesses in the City and providing zoning restrictions for each type of cannabis use. Ordinance 2017-007 requires each cannabis business applicant execute a development agreement with the City prior to conducting commercial cannabis activity.

The City accepted applications from interested parties to conduct commercial cannabis cultivation and cannabis dispensary businesses. The City accepted applications for several license types, including dispensary (and associated delivery services), commercial indoor cultivation, and testing facilities. The development agreement described below is the result of an approved application and subsequent negotiations between City staff and the business operator.

The proposed location has been reviewed and approved for General Plan and Zoning compliance and is over 600 feet from a school campus, commercial day care facility, or teen center.

III. ANALYSIS:

Development Agreement -

"Flavors" seeks to enter a development agreement (Attachment 2) with the City for the purpose of operating a cannabis dispensary. Flavors proposes to operate the cannabis dispensary at that certain real property located at 2213 Patterson Road in the City of Riverbank, Assessor's Parcel Number 075-026-044. Flavors has an agreement to lease the property and the property owner is aware of and agrees to the project operating on the site.

The major elements of the development agreement are summarized below:

- The term of the agreement is three (3) years.
- Flavors proposes the operation of a medicinal cannabis dispensary business. If future conditions allow, an adult use component may be added.
- Flavors plans operating on approximately seven thousand six hundred and sixty-eight (7,668) square feet of space for the dispensary.
- The project would provide Flavors with substantial private benefits that will place burdens upon City infrastructure, services, and neighborhoods. Flavors seeks to offset these impacts through a monthly payment classified as a “Public Benefit” amount. The Public Benefit is designed and intended to offset or mitigate any potential impacts of the project on the community.
- Flavors will pay to the City a Public Benefit of:
 - \$10,000 or five percent (5%) of gross receipts from operations, whichever is greater, each month for the first six (6) months following the issuance of a Conditional Use Permit;
 - \$15,000 or five percent (5%) of gross receipts from operations, whichever is higher, for months seven (7) through twelve (12) following the issuance of a Conditional Use Permit; and
 - \$18,000 or five percent (5%) of gross receipts from operations, whichever is higher, for each month thereafter through the end of the term of the development agreement.

In accordance with Government Code section 65864 *et seq*, the City Council must find that the Development Agreement:

- Is consistent with the objectives, policies, general land uses, and programs specified in the Riverbank General Plan and any applicable specific plan. *The Project has been found to be consistent with the General Plan policies listed below:*
 - *Policy LAND-4.2: The City will encourage the revitalization of existing commercial areas through flexible development standards, public investment, property assemblage, incentives, streamlined entitlement processes, catalyst projects, public-private partnerships, and other means.*
 - *Policy ED-7.3: The City will pursue locally-oriented commercial uses that are currently underserved in Riverbank, and expand upon the existing base of local-serving retail and service establishments as population increases create additional market demand.*
- Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole. *A security plan has been submitted which will ensure that Flavors’ activities will not be detrimental to the health, safety, and general welfare of residents within the neighborhood and within the City.*

- Will not adversely affect the orderly development of property or the preservation of property values. *Since Flavors is redeveloping an existing vacant building in an existing neighborhood of commercial structures, it can be seen with certainty that the project will not adversely affect the orderly development of the property or the preservation of property values.*
- Is consistent with the provisions of Government Code sections 65864 through 65869.5. *The project is consistent with the provisions of Government Code sections 65864 through 65869.5 in that a Development Agreement will provide assurance to the applicant that upon approval of the project, the applicant may proceed with the project under existing codes and policies and that the project is not located in an area with a local coastal program.*
- Contains a legal description of the property. *The Development Agreement contains Exhibit A, a legal description of the property.*

Conditional Use Permit -

A Conditional Use Permit must be obtained pursuant to the Development Agreement. Resolution No. 2017-026 contains thirteen conditions with which the business must comply. Besides compliance with all regulations and code requirements of both the City and the State, conditions include a requirement for background checks (Live Scans), hours of construction for the proposed tenant improvements, exterior lighting conditions, and a hold harmless section.

IV. STRATEGIC GOALS:

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

V. ENVIRONMENTAL DETERMINATION:

Flavors' project is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15301, applicable to existing facilities involving no expansion of the facility.

VI. RECOMMENDATION:

Adopt Resolution No. 2017-025 recommending the City Council adopt an Ordinance approving a development agreement by and between the City of Riverbank ("City") and PACAFI Cooperative, Inc.,

a California cooperative corporation doing business as Flavors and adopt Resolution No. 2017-026 approving a Conditional Use Permit.

- VII. ATTACHMENTS:**
1. Resolution No. 2017-025 Development Agreement
Exhibit A - Ordinance No. 2017-XXX
 2. Development Agreement
 3. Resolution No. 2017-026 Conditional Use Permit
Exhibit A – Site Plan
Exhibit B – Floor Plan

Respectfully Submitted By:

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

**CITY OF RIVERBANK
RESOLUTION NO. 2017-025**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK,
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE
APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF
RIVERBANK AND PACAFI COOPERATIVE, INC., A CALIFORNIA COOPERATIVE
CORPORATION DOING BUSINESS AS FLAVORS**

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

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

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

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

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

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

WHEREAS, Pacafi Cooperative, Inc., a California cooperative corporation doing business as Flavors (collectively "Flavors") submitted an application to the City for consideration of a development agreement to operate a cannabis dispensary business (the "Project"); and

Riverbank Planning Commission

Resolution 2017-025

Meeting of November 21, 2017

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WHEREAS, Flavors proposes to improve, develop, and use real property for the Project, in strict accordance with applicable state and local law, including, but not limited to, the Riverbank Municipal Code; and

WHEREAS, Flavors has a lease agreement to occupy that certain real property located at 2213 Patterson Road in the City of Riverbank, Assessor's Parcel Number 075-026-044 on which Flavors intends to develop the Project; and

WHEREAS, City and Flavors seek to enter a development agreement for the Project (the "Development Agreement") pursuant to Government Code section 65864 *et seq.* and all applicable local and state laws; and

WHEREAS, the Planning Commission held a duly noticed public hearing on November 21, 2017, to consider the Development Agreement and make recommendations to the City Council; and

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

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

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

NOW, THEREFORE, BE IT RESOLVED THAT THE PLANNING COMMISSION OF THE CITY OF RIVERBANK HEREBY RECOMMENDS CITY COUNCIL APPROVAL OF ORDINANCE NO. 2017-XXX, APPROVING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF RIVERBANK AND PACAFI COOPERATIVE, INC., A CALIFORNIA COOPERATIVE CORPORATION DOING BUSINESS AS FLAVORS, ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY THIS REFERENCE.

PASSED AND ADOPTED by the Planning Commission of the City of Riverbank at a regular meeting held on the 21st day of November, 2017; motioned by Commissioner _____, seconded by Commissioner _____, and upon roll call was carried by the following Planning Commission vote of _____:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Attest:

Donna M. Kenney
Secretary to the Planning Commission

Approved:

Anthony McKinney
Chairperson

EXHIBIT A

CITY OF RIVERBANK ORDINANCE NO. 2017-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF RIVERBANK AND PACAFI COOPERATIVE, INC., A CALIFORNIA COOPERATIVE CORPORATION DOING BUSINESS AS FLAVORS.

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

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

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

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

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

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

WHEREAS, PACAFI Cooperative, Inc., a California cooperative corporation doing business as Flavors ("Flavors") submitted an application to the City for consideration of a development agreement to operate a cannabis dispensary business (the "Project"); and

WHEREAS, Flavors proposes to improve, develop, and use real property for the Project, in strict accordance with applicable state and local law, including, but not limited to, the Riverbank Municipal Code; and

WHEREAS, Flavors has a lease agreement to occupy that certain real property located at 2213 Patterson Road in the City of Riverbank, Assessor's Parcel Number 075-026-044 on which Flavors intends to develop the Project; and

WHEREAS, City and Flavors seek to enter a development agreement for the Project (the "Development Agreement") pursuant to Government Code section 65864 *et seq.* and all applicable local and state laws; and

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

WHEREAS, the Planning Commission held a duly noticed public hearing on November 21, 2017, to consider the Development Agreement and make recommendations to the City Council; and

WHEREAS, on December 12, 2017, and January 9, 2018, the City Council held duly noticed public hearings to consider the Development Agreement; and

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

1. The Project is consistent with the goals, policies, and standards of the City of Riverbank General Plan and all other applicable standards and ordinances of the City of Riverbank.
2. In accordance with Government Code section 65864 *et seq.*, the City Council finds that the Development Agreement:
 - a. Is consistent with the objectives, policies, general land uses, and programs specified in the Riverbank General Plan and any applicable specific plan; and
 - b. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area nor detrimental to the general welfare of the residents of the City as a whole; and

- c. Will not adversely affect the orderly development of property or the preservation of property values; and
- d. Is consistent with the provisions of Government Code sections 65864 through 65869.5; and
- e. Contains a legal description of the property.

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

SECTION 1. The City Council of the City of Riverbank approves a Development Agreement by and between PACAFI Cooperative, Inc., a California cooperative corporation doing business as Flavors, and the City of Riverbank for the development of the Project, and instructs the City Manager to execute the Development Agreement subject to final, technical revisions as required and approved by the City Attorney.

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

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

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

SECTION 5. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Riverbank hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 6. This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, and publication of the Ordinance shall occur in a

newspaper of general circulation at least fifteen (15) days prior to its effective date, or a summary of the Ordinance published in a newspaper of general circulation at least five (5) days prior to adoption and again at least fifteen (15) days prior to its effective date.

The foregoing was introduced at a regular meeting of the City Council of the City of Riverbank held on the 12 day of December, 2017; 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

Attachment 2

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

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

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this _____ (____) day of _____, 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

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DEVELOPMENT AGREEMENT
CITY OF RIVERBANK
& PACAFI COOPERATIVE, INC. DBA FLAVORS
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Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

- D. Developer proposes to improve, develop, and use real property to operate a 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 _____, 2017, the Riverbank Planning Commission ("Planning Commission") adopted Resolution No. _____ recommending the Riverbank City Council ("City Council") adopt an ordinance establishing zoning limitations and requirements for all cannabis businesses.
- M. On _____, 2017, the City Council adopted Ordinance No. _____ 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 20, 2017, the Planning Commission, in a duly noticed and conducted public hearing, considered Developer's application for this Agreement.
- P. On _____, 2017, the Planning Commission recommended the City Council adopt Ordinance No. 2017-_____, which would allow Developer to operate the Project at the Site.
- Q. On December __, 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. 2017-_____.
- 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 11.62.83, and any other applicable laws that may be enacted or approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

(y) “Developer” means 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> ").
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(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: _____

If to Developer: _____

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: _____, 2017

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: _____, 2017

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

By: _____

Its: _____

California All-Purpose Acknowledgment

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

State of California)
)
County of _____)

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

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

Witness my hand and official seal.

(Signature)

(Seal)

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.

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

Witness my hand and official seal.

(Seal)

ORDER NO. : 1612007424

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

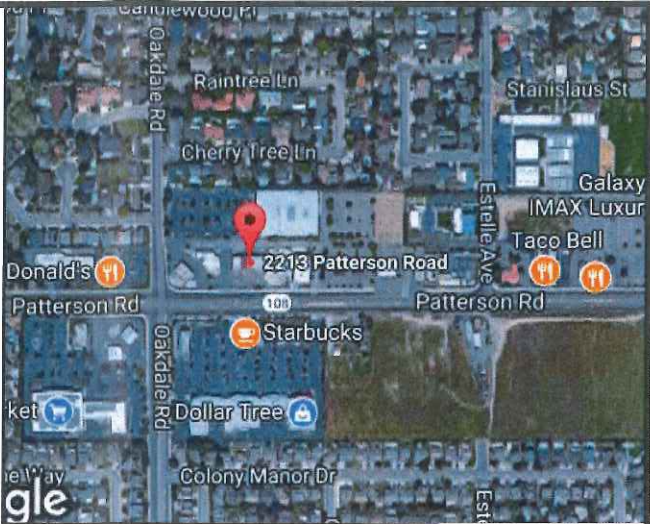
Exhibit B

SITE PLAN FOR:

PATIENT CARE FIRST

2213 PATTERSON ROAD RIVERBANK, CALIFORNIA

SCALE 1" = 20'



RIVERBANK CALIFORNIA

Vicinity Map
NTS

SHEET INDEX

- 1 SITE PLAN
- 2 BUILDING FLOOR PLAN
- 3 ELEVATIONS PLAN

SITE INFORMATION:

OWNER: GUARANTY HOLDINGS OF CALIFORNIA INC.
MAILING ADDRESS: 1407 MITCHELL ROAD MODESTO CALIFORNIA 95351
SITE ADDRESS: 2213 PATTERSON ROAD RIVERBANK CA
LOT SIZE: 33,272 SF (.76 AC)
APN: 075-026-044
EXISTING BUILDING AREA: 6,500 SF
TYPE OF CONSTRUCTION: EXTERIOR CONCRETE BLOCK WALLS
EXISTING USE: VACANT
PROPOSED USE: COMMERCIAL CANNABIS DISPENSARY/STORAGE
EXISTING GENERAL PLAN: COMMUNITY COMMERCIAL (C/C)
EXISTING ZONING PLAN: GENERAL COMMERCIAL (C-2)
EXISTING PARKING: 19 STANDARD INCLUDING 2 ACCESSIBLE (FRONT)

LEGAL DESCRIPTION:

BEING PARCEL 2 AS SHOWN ON THE MAP FILED IN BOOK 48 OF PARCEL MAPS, PAGE 96 STANISLAUS COUNTY RECORDS AND LYING WITHIN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE & MERIDIAN, CITY OF RIVERBANK, CALIFORNIA.

LEGEND

- EXISTING FIRE HYDRANT
- EXISTING STREET LIGHT
- EXISTING CHAIN LINK FENCE W/ VINYL SLOTS
- EXISTING DRIVEWAY
- EXISTING CURB, GUTTER AND SIDEWALK
- EXISTING POWER POLE W/ OVERHEAD LINES
- EXISTING AC CONDENSER
- EXISTING SEWER CLEAN OUT
- EXISTING TREE W/ 12" TRUNK DIAMETER
- EXISTING PROTECTIVE BOLLARD
- EXISTING PARKING LIGHT



NO.	REVISIONS	DATE	APPROVED
1	DESCRIPTIONS		

BENCHMARK ENGINEERING, INC.
CIVIL ENGINEERING & LAND SURVEYING
915 17th STREET - MODESTO, CALIFORNIA 95364
(209) 548-9300 FAX: (209) 548-9305



SITE PLAN

SITE PLAN FOR:
PATIENT CARE FIRST
2213 PATTERSON ROAD RIVERBANK CA.

JOB NO. 231600
DATE 10-04-17
DR BY
CK BY FM
SCALE AS SHOWN

SHEET NUMBER
1
OF 3 SHEETS

THREE (3) YEAR LEASE AGREEMENT

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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 Paterson Rd. Riverbank~~ (Article 26)
CA

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. \$9020.00 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 \$10,020.00 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 used 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

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 thereof 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 he 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.

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, sublessee, 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 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 29

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: _____

By: _____

TENANT: _____

TENANT: _____

TENANT: _____

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 _____, 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.

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.

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

DEVELOPMENT AGREEMENT
CITY OF RIVERBANK
& PACAFI COOPERATIVE, INC. DBA FLAVORS
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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]

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.

{CW049035.3}

DEVELOPMENT AGREEMENT
CITY OF RIVERBANK
& PACAFI COOPERATIVE, INC. DBA FLAVORS
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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

**City of Riverbank
Planning Commission
Resolution No. 2017-026**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIVERBANK
APPROVING THE REQUEST OF PACAFI COOPERATIVE, INC. FOR A
CONDITIONAL USE PERMIT TO OPERATE A CANNABIS DISPENSARY WITHIN
THE GENERAL COMMERCIAL (C2) ZONING DISTRICT LOCATED AT
2213 PATTERSON ROAD, APN: 075-026-044**

WHEREAS, the Community Development Department of the City of Riverbank has heretofore held a duly noticed public hearing, as required by law, on the requested Use Permit, in accordance with the Riverbank Municipal Code, Section 153.360-153.374; and

WHEREAS, the project proponent is PACAFI Cooperative Inc.; and

WHEREAS, the applicant is requesting to operate a cannabis dispensary within the General Commercial (C2) zoning district; and

WHEREAS, the property has a general plan designation of Community Commercial (C/C); and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred; and

WHEREAS, the proposed Use Permit is consistent with all applicable general and specific plans; and

WHEREAS, the proposed Conditional Use Permit with the conditions of approval is in conformity with both the intent and provisions of the Zoning Ordinance, RMC 153.216 of the City of Riverbank Code of Ordinances; and

WHEREAS, the project was found to be categorically exempt according to the California Environmental Quality Act, Section 15301 of Title 14 of the California Code of Regulations applicable to existing facilities involving no expansion of the facility that will not have a significant effect on the environment; and

WHEREAS, the request of PACAFI Cooperative, Inc. for the Conditional Use Permit is hereby granted and approved, subject to the following conditions:

- 1) This approval is dependent upon and limited to the proposals and plans contained, supporting documents submitted, presentations made to staff, Planning Commission and/or City Council as affirmed to by the applicant. Any variation from these plans, proposals, supporting documents or presentations is subject to review and approval by staff prior to implementation.

- 2) The applicant shall secure and comply with all applicable state and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- 3) The applicant shall comply with all regulations and code requirements of the Community Development Director, City Engineer, Building Official, Stanislaus Consolidated Fire Protection District, the Police Chief, State of California, and any other agencies requiring review of the project. If required, these agencies shall be supplied copies of the final maps, site plans, public improvement plans, grading plans and building plans.
- 4) All conditions of approval for this project shall be written by the project developer on all building permit plan check sets submitted for review and approval. These conditions of approval shall be on, at all times, all construction plans kept on the project site. It is the responsibility of the building developer to ensure that the project contractor is aware of, and abides by, all conditions of approval. Prior approval from the Community Development Director must be received before any changes are constituted in site design, building design, building colors or materials, etc.
- 5) Site plan shall be in substantial conformance to the existing site plan as submitted. Any proposed changes to the exterior of the building or site shall be reviewed by the Community Development Director, who will determine if Architecture and Site Plan Review is required. If required, plans shall be prepared, wet signed and sealed by a civil engineer, land surveyor, or architect registered in the State of California and licensed to prepare site and/or building plans.
- 6) Should the project be found, at any time, not to be in compliance with any of the Conditions of Approval, if the site receives numerous Health and/or Safety violations, or should the applicant construct or operate this development in any way other than specified in the Application or Supporting Documents or presentations to staff, Planning Commission or City Council, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to be violated.
- 7) All business partners and employees shall obtain background checks (Live Scans) before operations may commence.
- 8) Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the applicant a copy of this signed resolution and an approved building permit.

- 9) The hours of construction, including equipment warm-up, shall be limited to 7:00 a.m. to 6:30 p.m. on weekdays and 8:00 a.m. to 5:00 p.m. on weekends and legal holidays.
- 10) All new construction, including tenant improvements, requires building permits in accordance with all applicable building and fire codes.
- 11) The applicant shall defend, indemnify and hold harmless the City of Riverbank, its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this approval, or any aspect of the City's consideration of applicant's project. The applicant recognizes and agrees that applicant's voluntary commitment to meet the obligations described in this condition is an integral factor in the City's approval of this project. The intent of this condition is to require the applicant to bear the cost of any and all litigation instituted to overturn or in any way modify the City's approval of this project. Such costs include without limitation, any award of attorney's fees and costs to a prevailing plaintiff or petitioner.
- 12) This approval may be recalled to the Planning Commission for review at any time due to complaints regarding lack of compliance with conditions of approval, traffic congestion, noise generation, or other adverse operating characteristics. At such time, the Commission may revoke the approval or add/modify conditions approval.
- 13) All new exterior light fixtures shall be shown on plans subject to staff review and approval. All lights attached to buildings shall provide a soft "wash" of light against the wall. All building and parking or yard lights shall conform to City Standards and shall compliment the site and building architecture.

NOW THEREFORE, BE IT RESOLVED by the City of Riverbank Planning Commission that the requested Conditional Use Permit is approved subject to those conditions established by Resolution No. 2017-026 and attached Exhibits A and B.

Passed and adopted by the Planning Commission of the City of Riverbank at a regular meeting held on the 21st of November, 2017, by the following vote ____ - ____:

AYES: Commissioners:

NOES:

ABSENT:

ABSTAIN:

Attest:

Approved:

**Donna M. Kenney, Secretary
Planning and Building Manager**

**Anthony McKinney, Chairperson
Planning Commission**

**Exhibits: A – Site Plan
 B – Floor Plan**

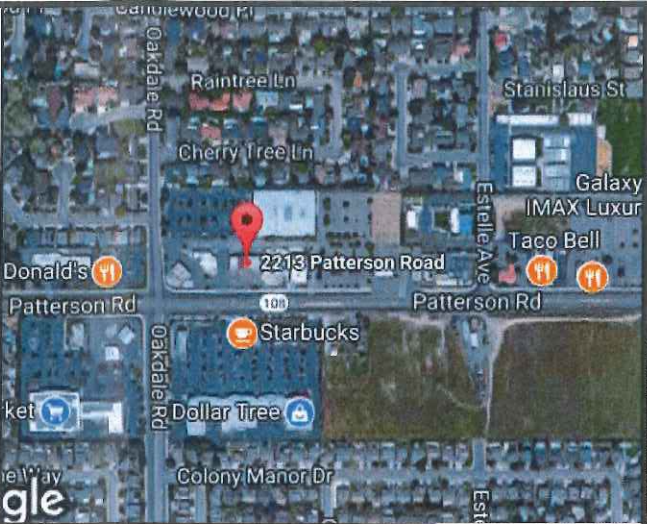
Exhibit A

SITE PLAN FOR:

PATIENT CARE FIRST

2213 PATTERSON ROAD RIVERBANK, CALIFORNIA

SCALE 1" = 20'



RIVERBANK CALIFORNIA

Vicinity Map
NTS

SHEET INDEX

- 1 SITE PLAN
- 2 BUILDING FLOOR PLAN
- 3 ELEVATIONS PLAN

SITE INFORMATION:

OWNER: GUARANTY HOLDINGS OF CALIFORNIA INC.
MAILING ADDRESS: 1407 MITCHELL ROAD MODESTO CALIFORNIA 95351
SITE ADDRESS: 2213 PATTERSON ROAD RIVERBANK CA
LOT SIZE: 33,272 SF (.76 AC)
APN: 075-026-044
EXISTING BUILDING AREA: 6,500 SF
TYPE OF CONSTRUCTION: EXTERIOR CONCRETE BLOCK WALLS
EXISTING USE: VACANT
PROPOSED USE: COMMERCIAL CANNABIS DISPENSARY/STORAGE
EXISTING GENERAL PLAN: COMMUNITY COMMERCIAL (C/C)
EXISTING ZONING PLAN: GENERAL COMMERCIAL (C-2)
EXISTING PARKING: 19 STANDARD INCLUDING 2 ACCESSIBLE (FRONT)

LEGAL DESCRIPTION:

BEING PARCEL 2 AS SHOWN ON THE MAP FILED IN BOOK 48 OF PARCEL MAPS, PAGE 96 STANISLAUS COUNTY RECORDS AND LYING WITHIN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 9 EAST, MOUNT DIABLO BASE & MERIDIAN, CITY OF RIVERBANK, CALIFORNIA.

LEGEND

- EXISTING FIRE HYDRANT
- EXISTING STREET LIGHT
- EXISTING CHAIN LINK FENCE W/ VINYL SLOTS
- EXISTING DRIVEWAY
- EXISTING CURB, GUTTER AND SIDEWALK
- EXISTING POWER POLE W/ OVERHEAD LINES
- EXISTING AC CONDENSER
- EXISTING SEWER CLEAN OUT
- EXISTING TREE W/ 12" TRUNK DIAMETER
- EXISTING PROTECTIVE BOLLARD
- EXISTING PARKING LIGHT



BENCHMARK ENGINEERING, INC.
CIVIL ENGINEERING & LAND SURVEYING
915 17th STREET - MODESTO, CALIFORNIA 95364
(209) 548-9300 FAX: (209) 548-9305



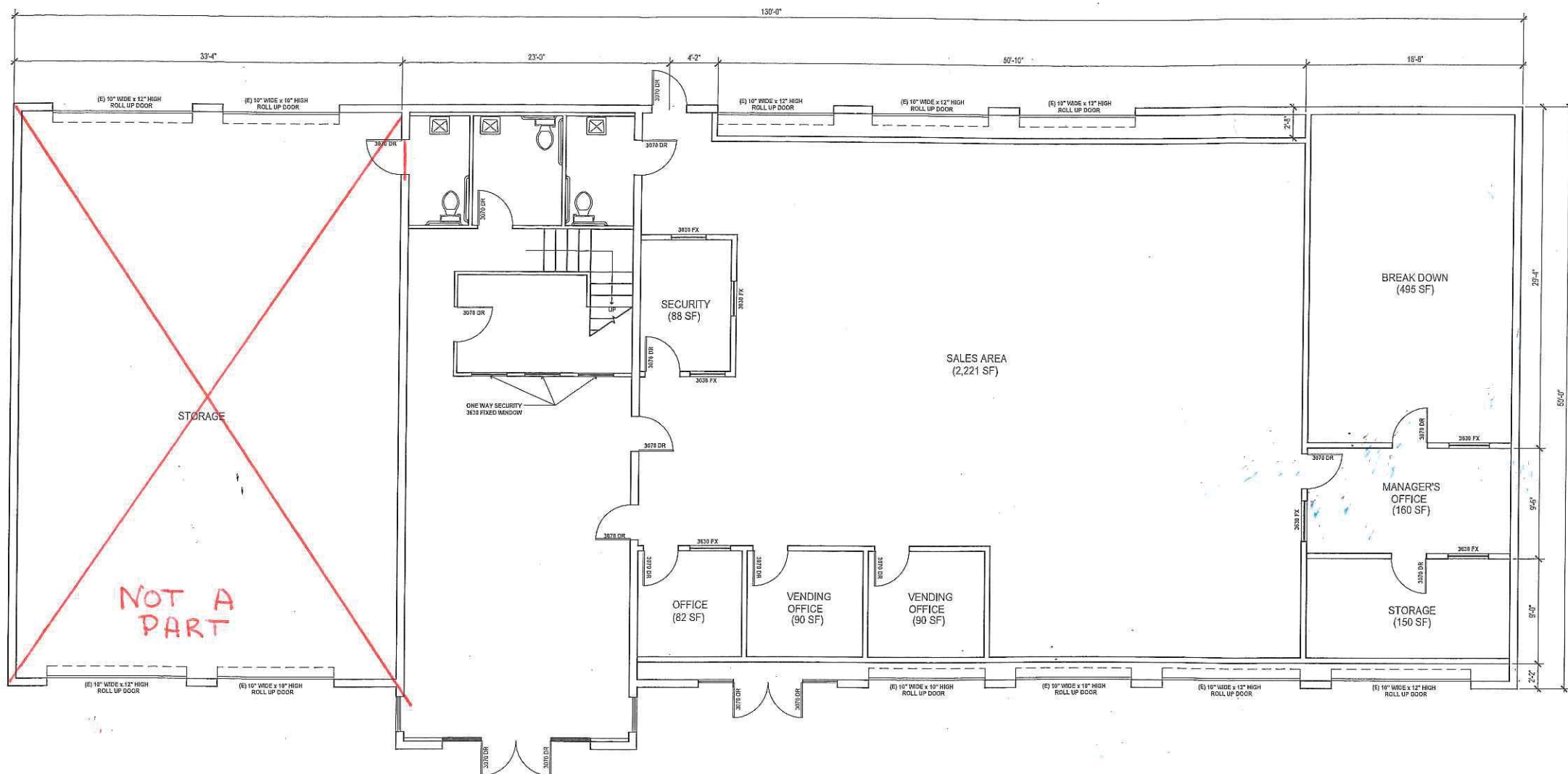
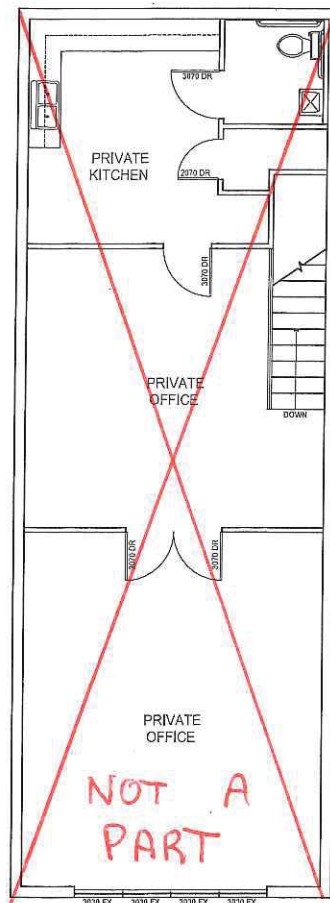
SITE PLAN

SITE PLAN FOR:
PATIENT CARE FIRST
2213 PATTERSON ROAD RIVERBANK CA.

JOB NO. 231600
DATE 10-04-17
DR BY
CK BY FM
SCALE AS SHOWN

SHEET NUMBER
1
OF 3 SHEETS

Exhibit B



PROPOSED FLOOR PLAN

SCALE: 3/16" = 1'-0"

X = Not a part of the dispensary.

SCALE: 3/16" = 1'-0"



JOB NO. 231800
DATE 10-04-17
DR BY KMC
CK BY RM
SCALE AS SHOWN

SHEET NUMBER
2
OF 3 SHEETS

PROPOSED FLOOR PLAN
SITE PLAN FOR:
PATIENT CARE FIRST
2213 PATTERSON ROAD RIVERBANK CA.



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REVISIONS

NO.	DESCRIPTIONS	DATE	APPROVED

DATE: 10-11-17

PREPARED UNDER THE DIRECTION OF: *[Signature]*

