

**ORDINANCE NO. 938 C.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AND ADOPTING THE DEVELOPMENT AGREEMENT BETWEEN LOVE'S TRAVEL STOPS AND COUNTRY STORES AND THE CITY OF MADERA**

WHEREAS, at its August 16, 2016 meeting, the Planning Commission approved various applications in support of the development of the Madera Travel Center project, located on approximately 25 acres of a 48.36 acre parcel at the southeast corner of the intersection of Avenue 17 and Freeway 99; and

WHEREAS, the approved Madera Travel Center Project is comprised of an 11,981 square-foot Travel Stop building, including 7,965 square feet within the store portion and a 4,016 square foot branded food restaurant(s) with drive-through, served by on-site parking for passenger vehicles and trailer trucks. Gasoline and diesel fuel, and propane will be sold on site, with nine covered fuel islands for trucks, and nine separate fuel islands for automobiles, as well as truck scales, oil-water separator, RV dump, and both above ground diesel fuel tanks and underground gasoline tanks, and an underground diesel exhaust fluid tank; and

WHEREAS, an environmental impact report was certified in conjunction with the approval of the Madera Travel Center project on by the Planning Commission on August 16, 2016; and

WHEREAS, Government Code Sections 65864 through 65869.5 provide the statutory authority for development agreements between municipalities and persons owning real property interest in the City; and

WHEREAS, pursuant to Government Code Section 65865 the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements as set forth in § 10-3.1701 et. Seq. of the Madera Municipal Code; and

WHEREAS, the City received an application to consider a development agreement in conjunction with the Madera Travel Center.

WHEREAS, the proposed Development Agreement has been reviewed by City staff and the Planning Commission in conformance with the applicable requirements of Government Code and the Madera Municipal Code.

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

**SECTION 1.** The provisions of the Development Agreement are consistent with the objectives, policies, general land uses and programs specified by the General Plan and the Zoning Ordinance, as amended.

SECTION 2. The Development Agreement is within the scope of the previously certified environmental impact report.

SECTION 3. The Development Agreement contains all information required by the California Government Code and Section 10-3.1702 of the Madera Municipal Code.

SECTION 4. The City Council finds that the development of a travel center, as contemplated by the Development Agreement, is compatible with the uses authorized in, and the regulations prescribed for, the C (Commercial) General Plan designation and C2 (Heavy Commercial) zone district.

SECTION 5. The Development Agreement is fair, just, and reasonable in light of both the scope of the project and the terms of the agreement, and is prompted by the necessities of the project which require that development of the project be allowed under a defined set of requirements and with a defined cost structure.

SECTION 6. The Development Agreement serves to encourage the achievement of growth management policies and objectives, and is in conformity with public convenience, general welfare and good land use practice. The agreement facilitates the extension of urban infrastructure within the designated Urban Growth Boundary and within the sphere of influence to and through properties which are presently inside the city limits or within the likely path of annexation. The proposal will not adversely affect the orderly development of property or the preservation of property values.

SECTION 7. The City Council hereby approves the Development Agreement substantially in the form attached hereto as Exhibit A, subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.

SECTION 8. The Mayor of the City of Madera is hereby authorized and directed to execute the Agreement on behalf of the City of Madera.

SECTION 9. The City Clerk is directed to transmit the Development Agreement to the County Recorder for recordation no later than ten (10) days after the adoption of this ordinance.

SECTION 10. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 11: This Ordinance shall not be codified in the Madera Municipal Code.

The foregoing Ordinance No. 938 C.S. was introduced and given its first reading at a regular meeting of the City Council of the City of Madera held on the 7<sup>th</sup> day of December, 2016 and adopted after a second reading at a regular meeting of the City Council held on the 21<sup>st</sup> day of December, 2016 by the following vote:

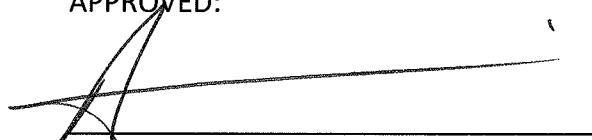
AYES: Mayor Medellin, Council Members Foley Gallegos, Rodriguez, Holley, Robinson, Oliver, Rigby.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

APPROVED:

  
\_\_\_\_\_  
ANDREW J. MEDELLIN, Mayor

ATTEST:

  
\_\_\_\_\_  
SONIA ALVAREZ, City Clerk

APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
BRENT RICHARDSON, City Attorney



Recorded in Official Records, Madera County

**REBECCA MARTINEZ**

Madera County Recorder

CIT Madera City

12/28/2016

12:07 PM

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Recording requested by:  
City of Madera

After Recording Return to:  
City Clerk  
City of Madera  
205 West Fourth Street  
Madera, California 93637-3527

Doc#: 2016032980



Titles: 1 Pages: 50

Fees 0.00

Taxes 0.00

Other 0.00

PAID \$0.00

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Fee Waived Per Section 27383 of the Government Code. No Document Tax Due \$ -0-

## **DEVELOPMENT AGREEMENT**

Between the City of Madera, Lisa M. Guzman, Trustee of the Bypass Trust under the Guzman Living Trust Dated May 13, 2013 and Trustee of the Survivor's Trust under the Guzman Living Trust Dated May 13, 2013, and Love's Country Stores of California, Inc.

**DEVELOPMENT AGREEMENT**  
**BETWEEN THE CITY OF MADERA, LISA M. GUZMAN, TRUSTEE OF THE BYPASS TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013 AND TRUSTEE OF THE SURVIVOR'S TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013, AND LOVE'S COUNTRY STORES OF CALIFORNIA, INC.**

THIS DEVELOPMENT AGREEMENT ("Development Agreement") is entered into to be effective on the date it is recorded with the Madera County Clerk/County Recorder (the "Effective Date"), between THE CITY OF MADERA, a California general law city ("City"); LISA M. GUZMAN, TRUSTEE OF THE BYPASS TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013, AND TRUSTEE OF THE SURVIVOR'S TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013, (collectively, "Landowner"); and LOVE'S COUNTRY STORES OF CALIFORNIA, INC., a California corporation ("Developer"). Each of the City, Landowner and Developer may be referred to as a "Party" hereunder and collectively as the "Parties."

**RECITALS**

A. The Legislature of the State of California has adopted California Government Code Sections 65864-65869.5 ("Development Agreement Statute") which authorizes a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries or in unincorporated territory within a city's sphere of influence for the development of such property in order to, among other things: encourage and provide for the development of public facilities; to support development projects; provide certainty in approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage an investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public land; and provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules, and regulations and subject to the conditions of approval of such projects, as provided in such annexation and/or development agreements.

B. Landowner owns an approximately 50 acre parcel of real property located within the City, near the northern edge of the City limits, at the Avenue 17/State Route 99 ("SR 99") interchange (APN 013-240-003)(the "Property"), as particularly described on Exhibit A.

C. Developer intends to develop approximately 25 acres of the Property, as generally depicted on Exhibit B (the "Project Site"), as a full service travel center, to include an approximately 11,981 square-foot travel stop building, comprised of an approximately 7,965 square foot convenience store and 4,016 square foot branded restaurant with drive-through, served by on-site parking for passenger vehicles and tractor-trailers, nine covered fuel islands for trucks and nine separate covered fuel islands for automobiles, as well as a truck tire care facility and approximately 4,400 square foot branded restaurant (in proposed areas separate from the travel stop building), truck scales, a hotel, a self-storage facility and an RV and boat storage facility, and other related services and amenities for the motoring public, including a historical pedestrian plaza in the southwest corner of Avenue 17 and Sharon Boulevard, which will address a part of Madera history (the "Project"). The remaining undeveloped portion of the Property will be separated from the travel center site through a parcel map.

D. At the time the Project Site is developed, Developer will be required to construct certain off-site public infrastructure improvements, which was a condition of regulatory approval of the Project, including the development approvals described in the Recitals, such improvements will include roadway improvements, freeway ramp improvements, sanitary sewer lines, storm drainage improvements, a water well and water lines and certain other utility and general improvements that will provide benefits to City and other property owners near the Developer's property who may wish to develop their properties in the future. City has agreed to reimburse Developer for a portion of the costs of constructing such off-site infrastructure improvements, and to

credit Developer for a portion of the otherwise applicable development impact fees. The City Council finds and determines that the aggregate amount of such reimbursement and credit will be less than the cost of such improvements and has further found that the City will not maintain any proprietary interest in the Project.

E. Pursuant and subject to the Development Agreement Statute, the City's Municipal Code and the City's police powers, City is authorized to enter into binding agreements with persons having legal or equitable interest in real property located within the City's municipal boundaries thereby establishing the conditions under which such property may be developed in the City.

F. City has granted the Developer a series of Development Approvals (as defined herein below) to implement the Project, which are incorporated and made a part of this Agreement. The Developer desires to receive the assurance that it may proceed with the Project in accordance with the existing land use ordinances, subject to the terms and conditions contained in this Agreement and to secure the benefits afforded the Developer by Government Code §65864.

G. This Agreement will eliminate uncertainty in planning for and securing orderly development of the Project, provide the certainty necessary for the Developer to make significant investments in public infrastructure and other improvements, assure the timely and progressive installation of necessary improvements, provide public services appropriate to each stage of development, establish phasing for the orderly and measured build-out of the Project consistent with the General Plan and the desires of the City to assure integration of the new development into the existing community.

H. The terms and conditions of this Development Agreement have undergone extensive review by the staff of the City, the City's Planning Commission, and the City Council of City and have been found to be fair, just, and reasonable.

I. City's City Council finds and determines that it will be in the best interests of City's citizens and the public health, safety, and welfare will be served by entering into this Development Agreement.

J. All of the procedures of the California Environmental Quality Act have been met with respect to the Project and this Development Agreement by the approval of Planning Commission Resolution No: 1812 adopted on August 16, 2016, which certified the final Environmental Impact Report for the Madera Travel Center dated July, 2016 (the "EIR").

K. City's City Council has approved this Development Agreement by Ordinance No. 938 C.S. adopted on December 21, 2016 and effective on December 28, 2016.

**NOW THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:**

1. **DEFINITIONS.** In this Development Agreement, the following words and phrases shall have the meanings ascribed below:

A. "County" is the County of Madera.

B. "Development Exaction" means any requirement of City in connection with or pursuant to any Land Use Regulation or Existing Development Approvals for the payment of fees, including impact fees and mitigation fees, or other monetary payments or exactions, imposed by City in order to lessen, offset, mitigate, or compensate for the impacts of new development on the environment or other public interests, whether such exactions constitute impositions made under Development Approvals or the City's General Regulations. The applicable Development Exactions in effect under the Existing Land Use Regulations are set forth in Exhibit C.

C. "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by City in connection with the development of the Project Site, including, but not limited to:

- (1) Site Plan Reviews;
- (2) Tentative and final parcel and/or subdivision maps;
- (3) Conditional use or special use permits, variances or other modifications to the City's development regulations;
- (4) Grading and building permits.

D. "Development Plan" means the Existing Development Approvals defined in Section 1(F) below and vested in Section 11 below, which are applicable to development of the Project.

E. "Effective Date" means the date upon which this Development Agreement is recorded with the County Clerk/County Recorder of the County, or the date upon which Ordinance No. 938 C.S. becomes effective, whichever occurs later.

F. "Existing Development Approvals" means this Development Agreement and those certain development approvals granted by the City of Madera Planning Commission at its August 16, 2016 meeting, as follows:

- (a) SPR 2015-18: Approving and establishing requirements for the overall development of the Project Site.
- (b) TPM 2015-01: Approving and establishing requirements for division of the subject property into 4 parcels and a remainder.
- (c) CUP 2015-09: Approving and establishing requirements for a changeable copy (gasoline prices) in association with a freeway sign on the Project Site.
- (d) CUP 2015-10: Approving and establishing requirements for the sale of beer and wine as a component of the operations of the travel stop component of the Project.
- (e) CUP 2015-11: Approving and establishing requirements for a drive-thru restaurant as a component of the travel stop component of the Project.
- (f) CUP 2015-12: Approving and establishing requirements for the truck stop component of the Project.
- (g) CUP 2015-13: Approving and establishing requirements for the automotive repair facility (Tire Care Facility) component of the Project.

- (h) CUP 2015-14: Approving and establishing requirements for the sale of beer and wine in conjunction with the freestanding restaurant component of the Project.
- (i) CUP 2015-15: Approving and establishing requirements for a drive-thru component as part of a freestanding restaurant on the Project Site.
- (j) CUP 2015-16: Approving and establishing requirements for a hotel on the Project Site.
- (k) CUP 2015-17: Approving and establishing requirements for a recreational vehicle and boat self-storage facility on the Project Site.
- (l) VAR 2015-02: Approving the construction of a freeway sign taller than forty feet.
- (m) Final EIR: Environmental Impact Report prepared in conformance with the California Environmental Quality Act and certified by the Planning Commission

G. "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date.

H. "Fee Credit" means that portion of Development Exactions fees which shall be credited by the City to Developer, as specified on Exhibit C-1 and as set forth in Section 8(B) below.

I. "Future General Regulations" means those "General Regulations" adopted by the City after the Effective Date of this Development Agreement.

J. "General Regulations" means those ordinances, rules, regulations, initiatives, policies, requirements, guidelines, constraints, or other similar actions of the City, other than site-specific Project approvals, which affect, govern, or apply to the Project Site or the implementation of the Development Plan. General Regulations are applicable to more than one property within the City.

K. "Infrastructure Improvements" means collectively, that portion of off-site public improvements to be dedicated to or owned by City and constructed by Developer pursuant to the terms of Section 7 of this Development Agreement, which will be installed at the locations identified on Exhibits E – I, inclusive, and which shall include the Roadway Improvements, Ramp Improvements, Sewer Improvements, Storm Drainage Improvements, Water Well Improvements, Water Line Improvements, and Utility and General Improvements, all as more specifically described in Section 7.

L. "Land Use Regulations" means all ordinances, resolutions, codes, rules regulations, and official policies of City governing the development and use of land, including, without limitation, the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; the provisions for reservation or dedication of land for public purposes; and the design, improvement, and construction standards and specifications applicable to the development of the Project Site that are a matter of public record on the Effective Date of this Development Agreement. "Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation, or official policy, governing:

- (1) The conduct of businesses, professions, and occupations;
- (2) Taxes and assessments;
- (3) The control and abatement of nuisances;



- (4) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; and
- (5) The exercise of the power of eminent domain.

M. "Owner" means the person having a legal or equitable interest in the Property and Project and all successors, transferees, or assigns thereof.

N. "Phase 1 Project" shall mean the approximately 11,981 square-foot travel stop building, comprised of an approximately 7,965 square foot convenience store and approximately 4,016 square foot branded restaurant(s) with drive-through, served by on-site parking for passenger vehicles and trailer trucks, nine covered fuel islands for trucks and nine separate fuel islands for automobiles, a truck tire care facility, truck scales, and an approximately 81 room hotel.

O. "Reimbursement Amount" shall mean the amount set forth in Section 8 below, which shall be payable by City to Developer to reimburse Developer for a portion of the cost and expense of designing and installing the Infrastructure Improvements. The Reimbursement Amount shall be due and payable as set forth in Section 8 below.

P. "State" shall mean the State of California.

Q. "Subsequent Development Approvals" means all development approvals required subsequent to the Effective Date in connection with development of the Project Site.

R. "Subsequent Land Use Regulation" means any Land Use Regulation adopted and effective after the Effective Date.

S. "Substantially Complete Building Permit Application" shall mean an application or request for a building permit that substantially satisfies the requirements of the General Regulations and the requirements specified in the Existing Development Approvals.

**2. INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals and all defined terms set forth therein are hereby incorporated into this Agreement as if set forth herein in full. All exhibits attached hereto are incorporated by reference.

**3. INTERESTS OF LANDOWNER AND DEVELOPER; BINDING EFFECT OF DEVELOPMENT AGREEMENT.** Developer represents that it has an equitable or other interest in the Property sufficient to be bound by this Development Agreement. That portion of the Property which comprises the Project Site, as described in Recital C, is hereby made subject to this Development Agreement. Development of the Project Site is hereby authorized and shall be carried out in accordance with the terms of this Development Agreement. Upon recordation of the Development Agreement, the provisions of this Development Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors in interest to and assigns of the Parties hereto. Developer's right to develop the Project Site in accordance with the Development Approvals and the terms of this Development Agreement including the obligations set forth herein shall not become effective unless and until Developer acquires the Project Site. Upon conveyance of Landowner's fee interest in the Project Site to Developer, Landowner shall have no further rights or privileges, and shall be fully released from any further liability or obligation under this Development Agreement with respect to the Project Site and the remainder of the Property retained by Landowner.

**4. PURPOSE OF THIS AGREEMENT.**

A. Developer Objectives. In accordance with the legislative findings set forth in the Development Agreement Statute, and with full recognition of City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with Existing Land Use Regulations subject to the terms of this Development Agreement and City's Subsequent Land Use Regulations. In the absence of this Development Agreement, Developer would have no assurance that it can complete the Project for the uses and to the density and intensity of development set forth in this Development Agreement. This Development Agreement, therefore, is necessary to assure Developer that the Project will not be (i) reduced in density, intensity or use, or (ii) subjected to new rules, regulations, ordinances or official policies or delays which are not permitted by this Development Agreement or the Reservation of Authority (as defined in Section 10 below).

B. Mutual Objectives. Development of the Project in accordance with this Development Agreement will provide for the orderly development of the Project. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Project, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted. The Parties believe that such orderly development of the Project will provide many public benefits to City through the imposition of development standards and requirements under the provisions and conditions of this Development Agreement, including without limitation, increased tax revenues, installation of off-site infrastructure improvements, and job creation. Additionally, although development of the Project in accordance with this Development Agreement will restrain City's land use or other relevant police powers, this Development Agreement provides City with sufficient Reservation of Authority during the term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to City, Developer will receive assurance that the Project may be developed during the term of this Development Agreement in accordance with the Existing Land Use Regulations and Reservation of Authority.

C. Mutual Benefits; Acknowledgment of Consideration. By this Development Agreement, City and Developer desire to set forth the terms under which Developer will receive certain reimbursements for commercial development and economic performance on the Project Site. The City has determined to offer Developer reimbursements and credits for a portion of the costs incurred by Developer in its installation of the Infrastructure Improvements because the same will provide significant benefits to City by increasing the capacity of and expanding City's water, storm drainage and sewer service systems, by the installation of traffic signals and a new roadway to promote the orderly flow of traffic and increase City's street network capacity, and otherwise. The aggregate amount of such reimbursement and all credits provided to Developer hereunder will not exceed the actual and reasonable cost incurred by Developer in connection with construction and installation of the Infrastructure Improvements as determined pursuant to Section 8 below. The Project will also promote the economic wellbeing of City by attracting businesses that will provide City with a significant, long-term revenue stream and a source of employment for residents of the community. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Development Agreement is fair, just, and reasonable.

**5. EXHIBITS.** The following exhibits are incorporated into and made a part of this Development Agreement by this reference:

<u>Exhibit A</u>	Legal Description of Property
<u>Exhibit B</u>	Depiction of Project Site
<u>Exhibit C-1</u>	Development Exactions (Fees) and Project Fee Credits
<u>Exhibit C-2</u>	Traffic and Transportation Mitigation Fees
<u>Exhibit D</u>	General Description of Infrastructure Improvements, Costs and Reimbursable Amounts

<u>Exhibit E</u>	Depiction of Roadway Improvements/Roadway Work
<u>Exhibit F</u>	Depiction of Sewer Improvements/Sewer Work
<u>Exhibit G</u>	Depiction of Storm Drainage Improvements/Storm Drainage Work
<u>Exhibit H</u>	Depiction of Water Improvements/Water Work
<u>Exhibit I</u>	Depiction of Utility and General Improvements/Utility and General Improvements Work
<u>Exhibit J</u>	Form of Assignment and Assumption Agreement

**6. TERM AND TERMINATION.**

A. Term. The term of this Development Agreement shall commence on the Effective Date and shall terminate thirty six (36) months from the Effective Date [subject to Section 22(I)], provided, however, that the Term may be extended pursuant to the following:

1) If Developer submits a properly completed Substantially Complete Building Permit Application for each building in the Phase 1 Project prior to the expiration of the 36-month initial term, then such term shall automatically be extended to a date forty eight (48) months from the Effective Date, without the need for further action by the Parties. Thereupon, the City shall promptly take action on such applications, as contemplated in Section 7(D)(1) below.

2) If the term has been extended as permitted by Section 6(A)(1) of this Agreement and if the Building Permits are issued by the City, as contemplated, then such term shall automatically be extended to a date sixty (60) months from the Effective date, without the need for further action by the Parties.

3) If the term has been extended by Section 6(A)(2) of this Agreement and if Developer completes each building in the Phase 1 Project and receives a temporary or final certificate of occupancy within sixty (60) months of the Effective Date, the term of this Agreement shall automatically be extended to a date twenty (20) years from the Effective Date, without the need for further action by the Parties.

B. Termination in the Event of Order or Judgment. This Development Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order after exhaustion of any appeals directed against the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval by the City Council of City of this Development Agreement. In the event that this Agreement or any of the Development Approvals are subjected to legal challenge by a third party, and Developer is unable, or elects not to proceed with the Project due to such legal action, the term of and timing for obligations imposed pursuant to this Agreement shall be automatically tolled during such legal action.

C. Termination of Agreement Does not Terminate Project Approvals. Termination of this Development Agreement shall not constitute termination of any other land use entitlement approved for the Project Site prior to the Effective Date of this Development Agreement, or to any Subsequent Development Approvals issued by the City during the term of the Agreement. Upon termination of this Development Agreement, no party shall have any further right or obligation hereunder except with respect to (1) any obligation to have been performed prior to such termination, (2) any default in the performance of the provisions of this Development Agreement which has accrued prior to such termination, and/or (3) any provision which is noted to survive such termination, or which, by its nature, is intended to survive such termination. Pursuant to California *Government Code* §66452.6(a) the term of any parcel map or tentative subdivision map shall automatically be extended for the term of this Agreement.

**7. DEVELOPER'S PROVISIONS OF INFRASTRUCTURE IMPROVEMENTS; TIMING AND CITY ASSISTANCE.**

A. Developer's Provision of Infrastructure Improvements. If the Project or any portion thereof is constructed, Developer agrees to construct and install the following Infrastructure Improvements:

(1) Roadway Improvements. Developer will construct and install (a) two traffic signals (the "Traffic Signals"); (b) certain street lights, street signage and striping on or along Avenue 17 and Sharon Boulevard; (c) all paving, curbs, gutters and sidewalks to widen Avenue 17 (the "Avenue 17 Street Widening"); and (d) paving, curbs, gutters and a portion of the parkway landscaping and sidewalk (to the extent not being constructed by a third-party developer) for Sharon Boulevard, all as generally described on Exhibit D and at the locations identified on Exhibit E ("Sharon Boulevard Work") (the Traffic Signals, the Avenue 17 Street Widening, the Sharon Boulevard Work and all related improvements are collectively, the "Roadway Improvements" and the associated work, the "Roadway Work").

(2) Freeway Ramp Improvements. Developer will construct and install a dedicated right turn lane on the north bound exit ramp of the Freeway 99 and Avenue 17 interchange, as generally described on Exhibit D and at locations specified on Exhibit E, (the "Ramp Improvements").

(3) Sewer Improvements. Developer will construct and install a sewer line to connect the Property to City's existing sewer system at a point located within Sharon Boulevard, north of Ellis Street, as generally described on Exhibit D and at the locations identified on Exhibit E, which pipeline will run from such point north of and then within the Sharon Boulevard right of way (the Sewer Line and all related improvements, collectively, the "Sewer Improvements" and the associated work, the "Sewer Work").

(4) Storm Drainage Improvements. Developer will construct and install a storm drain pipeline approximately 18" in diameter within the Avenue 17 right of way and a storm drain pipeline approximately 30" in diameter within the Sharon Boulevard right of way to connect to a privately owned and maintained temporary storm retention basin to be installed by Developer at the southernmost point of the Project site, all as generally described on Exhibit D and to be installed at the locations identified on Exhibit G, and with such temporary storm retention basin to be used until a permanent storm drain connection to the south becomes available (collectively, with all related improvements, the "Storm Drainage Improvements" and the associated work, the "Storm Drainage Work"). Upon completion of the permanent storm retention basin off-site, Developer may remove the temporary retention basin facility and devote that portion of the Project Site to other purposes in conformance with the conditions of approval adopted by the Planning Commission in conjunction its approval of the Existing Development Approvals.

(5) Water Well and Water Line Improvements. Developer agrees to develop a water well site on certain land contiguous to the Property to the south, as shown on Exhibit H (the "Well Site"), with rights to so construct and utilize the Well Site to be secured by City, as depicted on Exhibit H, subject to approval by the City engineer. In addition to the Well Site, Developer shall construct and install a 24" diameter PVC water pipeline connecting the well on the Well Site to the existing City water system at a point north of the Project site, as shown on Exhibit H (collectively, with all related improvements, the "Water Well and Water Line Improvements" and the associated work, the "Water Work"), with any rights in third-party property necessary to complete the Water Work to be secured by City. Any interest of Developer in or to the Well Site (and/or associated infrastructure) shall be dedicated to City in the manner prescribed by the Existing Land Use Regulations after completion of the Water Work and acceptance thereof by the City engineer. Notwithstanding anything to the contrary herein, in the event City is unable to secure third-party rights as contemplated above, City will work with Developer in good faith and with due diligence to provide an alternate location for the Well Site and/or connection point of the subject water pipeline to the City water system, all at City's expense.

(6) Miscellaneous Street and Utility Improvements. Developer will construct and install (a) median and parkway landscaping; and (b) dry utility trenching, conduits and pull boxes, all as generally described on Exhibit D and at locations identified on Exhibit I (collectively, with all related improvements, the "Utility and General Improvements" and all the associated work, the "Utility and General Improvements Work").

B. City's Share of Costs and Expenses. The City's reasonable and fair share of the costs and expenses associated with designing, constructing and installing the Infrastructure Improvements (based on the relative value of the Infrastructure Improvements to the City and neighboring landowners as compared to the value to Developer and the Project), shall be included in the Reimbursement Amount set forth in Section 8 below.

C. Obligation to Install Infrastructure Improvements as Condition to Certificate of Occupancy; Timing. Developer shall construct and install the Infrastructure Improvements concurrently with and as a condition precedent to the issuance of a certificate of occupancy for any improvement in the Project. All Infrastructure Improvements shall be designed, constructed and installed in accordance with standard engineering and construction industry practices and the Existing Land Use Regulations and, to the extent not addressed by the Existing Land Use Regulations, other applicable codes, rules, City standards, regulations and laws, in a good and workmanlike condition, at Developer's sole cost and expense (except as provided herein).

D. City Obligations to Assist with the Infrastructure Improvements. In addition to City's obligation to pay the Reimbursement Amount and Fee Credit to Developer, as set forth in Section 8 below, in connection with Developer's installation of any of the Infrastructure Improvements, the Parties agree as follows:

(1) Cooperation. City shall accept for processing and promptly take action on all applications, provided they are in a proper form and acceptable for required processing, for discretionary permits, tract or parcel maps, building permits, or other land use permits or entitlements for development of the Project, in accordance with the provisions of this Development Agreement and the Development Approvals. City shall cooperate with Developer in providing expeditious review of any such applications, permits, or land use entitlements and, upon request and payment of any costs and/or extra fees associated therewith by Developer, City shall assign to the Project planners, building inspectors, and/or other staff personnel as required to ensure the timely processing and completion of the Project.

(2) Obtaining Easements and Rights of Way. City shall (a) grant to Developer any necessary temporary or permanent easements or rights-of-way to install, operate, repair, maintain, replace and access the Infrastructure Improvements or otherwise develop the Project over, on or under City owned land; (b) assist Developer in obtaining any necessary temporary or permanent easements or rights-of-way to install, operate, repair, maintain, replace and access the Infrastructure Improvements over, on or under County owned land; and (c) secure, in favor of Developer, any necessary temporary or permanent easements or rights-of-way to install, operate, repair, maintain, replace and access the Infrastructure Improvements over, on or under other third-party land, including without limitation, those required in regard to the Well Site and Water Work addressed in Section 7(A)(5) above, and in each case, temporary construction easements for pedestrian and vehicular ingress and egress and vehicular parking and the placing and storing of construction machinery, equipment, supplies, materials, dirt and fill. The Parties agree to cooperate in good faith in regard to the foregoing to facilitate obtaining such easements or rights of way as expeditiously as reasonably possible. In any event, City shall promptly provide to Developer a copy of any such easements obtained by City in favor of Developer. In the event the Developer and/or City is unable, after exercising all reasonable efforts, to acquire the real property interests necessary for the construction of such Infrastructure Improvements, as contemplated herein, by the time any final map is filed with the City, the City shall negotiate the purchase of the necessary real property interests to allow the Developer to construct the Infrastructure Improvements as required by this Agreement and, if

necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire such required real property interests.

(3) Approval by City Engineer; Dedication and Acceptance. Upon substantial completion of the Infrastructure Improvements by Developer in accordance with the terms of this Agreement, the City Engineer shall inspect and approve the same, which approval shall not be unreasonably withheld or delayed. Upon such approval by City Engineer and Developer's dedication of the Infrastructure Improvements to City in the manner prescribed by applicable City codes, ordinances, and regulations, City shall accept the same, subject to Developer's compliance with the Existing Land Use Regulations.

(4) Operation and Maintenance of Infrastructure Improvements; Warranty. Upon acceptance of the Infrastructure Improvements by City, as contemplated above, (a) City shall, at its sole cost and expense, operate and maintain the Infrastructure Improvements in good and working order as part of its public systems; and (b) Developer shall have no further interest in or obligation in regard to the Infrastructure Improvements beyond that inuring to the public in general.

**8. FEE CREDIT; CITY OBLIGATION TO REIMBURSE DEVELOPER.** Developer, pursuant to this Agreement, will be financing the construction of Infrastructure Improvements that otherwise would be paid for by City or other parties, or would serve other properties beyond the Project Site, or would be financed by City Development Exaction Fees and other public utility and infrastructure funding sources. In consideration of the financing of such improvements by Developer, and in consideration of the substantial public benefits to be achieved by the Project during each year of the term of this Development Agreement, City and Developers agree that Developers shall be entitled to fee credits and reimbursement as provided in this Section 8. Pursuant to this Section 8, City shall offer fee credit and/or reimburse Developer for the City's fair and reasonable share of Developer's reasonable and actual cost and expense incurred in connection with the construction and installation of the Infrastructure Improvements (the "Reimbursement Amount"). Developer shall provide to City satisfactory evidence of such costs and expenses as actually incurred by Developer, as provided by Section 8(J) below.

A. Reimbursement Amount. The total Reimbursement Amount, not including costs associated with the Water Well Improvements or the Ramp Improvements Excess Cost (as defined below), shall not exceed Six Million Eight Hundred Seventy Thousand Dollars (\$6,870,000). This Reimbursement Amount, established based on the maximum reimbursement schedule set forth in Exhibit D, constitutes the City's fair and reasonable share of the Developer's reasonable and actual costs. City and Developer agree that due to the variability of potential costs associated with the Water Well Improvements and the Ramp Improvements, those costs are not fully included in the maximum Reimbursement Amount, but will be reimbursed in accordance with the terms set forth in Section 8(C) and Section 8(D) of this Agreement, respectively. In no event shall the City be required to reimburse an amount above Developer's actual costs and expenses. Developer shall provide to City satisfactory evidence of actual costs and expenses pursuant to Section 8(J) of this Agreement.

B. Fee Credit. To the extent Developer dedicates land, funds or constructs Infrastructure Improvements that exceed the size or capacity required to serve the Project Site for the benefit of other properties, or if such dedication or Infrastructure Improvements benefit other properties, regardless of their size or capacity, City shall provide Developer with credit against the Development Exaction Fees applicable to the Project, as generally set forth in Exhibit C-1. The fee credit shall equal (and shall not exceed) Developer's aggregate hard and soft costs (including land costs, if applicable) actually paid by Developer for the particular Infrastructure Improvement in question. Fee credit shall be given by the City at the time the applicable Development Exaction Fees would otherwise be paid by Developer.

C. Water Well Reimbursement. Upon Developer's completion and City's acceptance of the Water Well Improvements, City shall reimburse to Developer the full and complete actual costs to develop the Water Well, less any fee credits applicable to water well costs that are available to Developer in accordance with Section 8(B), subject to the terms and conditions set forth in this Section 8(C).

(1) Reimbursable costs for the Development of the Water Well shall include all items required by the City Engineer to develop and make operational a water well to City Standards. Design and Engineering Costs, City permit and inspection fees, and Contract Overhead not to exceed 10% shall be eligible for reimbursement. Costs shall be documented in the manner described in Section 8(J) of this Agreement.

(2) Prior to the selection of a contractor and commencement of work, Developer shall submit for approval by the City Engineer an itemized cost proposal for all improvements and associated expenses which will be eligible for reimbursement.

(3) Reimbursement for the Water Well Improvements shall be made within 60 days of the City Engineer's determination of Actual Expenses Costs and Expenses as described in Section 8(J) of this Agreement.

D. Ramp Improvement Excess Cost. As set forth in Exhibit D, the total Reimbursement Amount includes estimated costs for the Ramp Improvements of One Million Ninety Thousand Seventy Six Dollars (\$1,090,076). The Parties recognize and agree that the actual cost of the Ramp Improvements may substantially deviate from the estimated cost shown in Exhibit D due to design changes that may be required by Caltrans after the Effective Date (such increased costs, the "Ramp Improvement Excess Costs"). City shall reimburse to Developer the full and complete actual costs to develop the Ramp Improvements up to a maximum total cost of Two Million Dollars (\$2,000,000), less the amount of One Million Ninety Thousand Seventy Six Dollars (\$1,090,076), if paid to Developer pursuant to Sections 8(E) and 8(F), subject to the terms and conditions set forth in this Section 8(D).

(1) Reimbursable costs for the development of the Ramp Improvements shall include all items required by Caltrans, in consultation with the City. Design and Engineering Costs, City or Caltrans permit and inspection fees, and Contract Overhead not to exceed 10% shall be eligible for reimbursement. Costs shall be documented in the manner described in Section 8(J) of this Agreement.

(2) Prior to the selection of a contractor and commencement of work, Developer shall submit for approval by the City Engineer an itemized cost proposal for all improvements and associated expenses which will be eligible for reimbursement.

(3) Reimbursement for the Ramp Improvement Excess Costs shall be made through Supplemental Payments pursuant to Section 8(G), below.

(4) To the extent that the actual cost of Infrastructure Improvements (not including costs associated with the Water Well Improvements or the Ramp Improvements Excess Cost) are below the total Reimbursement Amount, the difference shall be subtracted from the amount of the Ramp Improvement Excess Cost otherwise payable to Developer under this Section.

E. Partial Lump Sum Reimbursement at Completion and Acceptance of Infrastructure Improvements. In addition to any amount of fee credits or reimbursements made to Developer pursuant to Sections 8(B) through 8(D) of this Agreement, upon Developer's completion and City's acceptance of all Infrastructure Improvements as defined in this Agreement, City shall reimburse to Developer a sum of not less than one million dollars (\$1,000,000).

Any amount the City elects to reimburse to Developer in excess of \$1,000,000 pursuant to this Section may be credited against the amount to be reimbursed to Developer pursuant to Section 8(F) below. Partial Reimbursement of the Infrastructure Improvements pursuant to this Section shall be made within 60 days of the City Engineer's determination of Actual Costs and Expenses as described in Section 8(J) of this Agreement.

F. Partial Lump Sum Reimbursement After One Year of Phase 1 Project Operation. In addition to any amount of fee credits or reimbursements made to Developer pursuant to Sections 8(B), 8(C), 8(D) and 8(E) of this Agreement, upon the one-year anniversary of the issuance of a certificate of occupancy for the final building to be occupied in the Phase 1 Project, City shall reimburse to Developer an amount equal to the lesser of: (1) the actual, total combined costs for all Roadway Improvements and Traffic and Transportation Mitigation Fees, less any amount reimbursed to Developer pursuant to Section 8(E) of this Agreement; or (2) the sum of Five Million Two Hundred Thousand Dollars (\$5,200,000), less any amount reimbursed or scheduled to be reimbursed to Developer pursuant to Section 8(E) of this Agreement.

G. Reimbursement From Future Sales Taxes and Transient Occupancy Taxes - "Supplemental Payments". In addition to fee credits and reimbursements provided pursuant to Sections 8(B) through 8(F) of this Agreement, in order to reimburse Developer for a portion of the Developer's unreimbursed cost of the Infrastructure Improvements, City agrees to make periodic supplemental reimbursement payments ("Supplemental Payments") to Developer in the amounts, at the times, and subject to the terms and conditions set forth in this Section 8(G).

(1) Calculation of Supplemental Payments. The Supplemental Payments required to be made by City hereunder shall be calculated based upon the amount of Sales Taxes and Transient Occupancy Tax generated by the Project Site. "Sales Taxes" shall mean the sales tax revenues from the imposition of the Bradley-Burns Uniform Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code), as the same may be amended from time to time, that the California State Board of Equalization ("SBOE") determines are generated by the Project Site and are paid to the City. Any sales tax revenues generated by the Project Site that the SBOE determines are payable to any jurisdiction other than City shall be excluded in the calculation of Sales Taxes hereunder. "Transient Occupancy Tax" shall mean the special tax levied within the City of Madera pursuant to Chapter 4 of Title VIII of the Madera Municipal Code on the privilege of occupying a room or rooms, or other living space, in a hotel or other transient lodging facility where the occupancy is less than 30 days. In no event shall the Supplemental Payments required to be made hereunder be secured by the City's general fund.

(2) Timing of Supplemental Payments. The Supplemental Payments shall be made by the City semi-annually, in arrears, no later than May 15th (for the preceding July 1st through December 31st period) and November 15th (for the preceding January 1st through June 30th period). The first calendar year for which Supplemental Payments are made shall be the second calendar year during which the Project is open to the public for business and Sales Taxes and Transient Occupancy Taxes are generated. After the supplemental payments commence, City's obligation shall continue until the earlier of (a) the expiration of the term of this Development Agreement, or (b) the date on which the total amount of Supplemental Payments made to Developer pursuant to this Section, plus the fee credits and reimbursements previously received by Developer pursuant to Sections 8(B) through 8(F), equal the total Reimbursement Amount.

(3) Amount of Supplemental Payment. For each calendar year for which Developer is entitled to receive a Supplemental Payment hereunder, the Supplemental Payment for such calendar year shall be not less than one-half of the total combined amount of Sales Tax and Transient Occupancy Tax generated by the Project Site and received by the City.



(4) Calculation of Supplemental Payment. The City, prior to making each semi-annual Supplemental Payment, shall determine the total Sales Taxes and Transient Occupancy Tax generated from the Project Site during the prior semi-annual period and actually paid to the City for such period based on the data provided by the SBOE (Sales Tax) and the operator of the Project Site Hotel (Transient Occupancy Tax) to City, and based upon such determination and the formula described in Section 8(G)(3) above, the amount of the applicable semi-annual Supplemental Payment. Such determination as between City and Developer shall be conclusive and binding on City and Developer, except that either party shall have the right to contest the Sales Tax data provided by SBOE in accordance with the procedures available under applicable law. If any final decision in such contest results in a recalculation of such data, then the Parties shall make such adjustments in the amounts credited pursuant to this Section as are necessary to reflect the final determination. In the event that Developer is entitled to receive a Supplemental Payment for the prior semiannual period in accordance herewith, then City shall, in the ordinary course of business, remit the amount of the Supplemental Payment to Developer.

(5) Developer Cooperation. Developer shall cooperate with City in providing to City such information that Developer may have regarding Sales Taxes and Transient Occupancy Taxes, subject to any nondisclosure or confidentiality provisions in Developer's leases with its tenants, if any. Specifically, Developer shall provide and shall require any of its tenants, licensees, franchisees or transferees to provide to City copies of the quarterly sales tax reports submitted to the SBOE concurrently with submission to the SBOE.

H. Reimbursement from Benefited Properties. The Parties recognize that certain of the Infrastructure Improvements will significantly benefit the future development of other properties (the "Benefited Properties"). To facilitate equitable distribution of costs among benefitted properties, the City shall require that all individual developers of Benefited Properties reimburse the City for their fair share costs of the Infrastructure Improvements paid for by Developer. For each Benefited Property, full reimbursement shall be required as a condition precedent to the issuance of the first building permit for that Benefited Property. The City shall implement this requirement through the imposition of a condition of approval on the use permit or first tentative subdivision map of any nature approved for each Benefited Property and/or as a requirement of any development agreement entered into for a Benefited Property. The City shall not be obligated to pay reimbursements to Developer from funds received from individual developers of Benefited Properties. City shall have the option to utilize any such funds it collects to make the annual Supplemental Payment to the Developer in lieu of using Sales Tax and Transient Occupancy Tax generated by the Project Site as contemplated by Section 8(G) of this Agreement.

I. Waiver of Further Reimbursement. Except for the Reimbursement Amount, as set forth in this Development Agreement, Developer hereby waives all rights to any other reimbursements in relation to the Infrastructure Improvements.

J. Developer's Cost Documentation. Within ninety (90) days of City's acceptance of the Infrastructure Improvements, Developer shall provide City with evidence of actual and reasonable costs and expenses for the Infrastructure Improvements for which reimbursements are to be made, in order to determine the final Reimbursement Amount. Such evidence shall include executed contracts, invoices, cancelled checks, and other documents reasonably required by the City Engineer to determine the reasonable and actual costs of the Infrastructure Improvements, together with a written certification signed by an officer of Developer setting forth hard and soft costs paid by Developer for the Infrastructure Improvements (the "Developer's Cost Documentation"). The actual Reimbursement Amount and the Fee Credit shall be determined in the reasonable discretion of the City Engineer, in good faith, based on the Developer's Cost Documentation.

K. Right to Reimbursement. All rights to reimbursement shall be personal to the Developer and such rights shall not run with the Property. Notwithstanding the foregoing, Developer may transfer or convey its right to fee credit or reimbursement to a third party, upon written notification to the City of said transfer or conveyance.

L. Term for Credits and Reimbursements. City shall not be obligated to pay any funds to Developer toward the Reimbursement Amount following the expiration of the term of this Development Agreement.

M. Installation of Monuments as Condition Precedent to Reimbursements. The installation of monuments required in conjunction with the approval and recordation of the Parcel Map creating the Project Site (TPM 2015-01) shall occur prior to the issuance of any reimbursements specified in Section 8 of this Agreement.

9. **CONSTRUCTION OF HISTORIC PEDESTRIAN PLAZA.** Notwithstanding any other provision of this Agreement, Developer shall construct and complete the Historic Pedestrian Plaza as identified in Recital C and the Existing Development Approvals, no later than issuance of a certificate of occupancy for the final building to be occupied in the Phase 1 Project.

10. **RESERVATION OF AUTHORITY.** The following shall be referred to as City's "Reservation of Authority":

A. Limitations, Reservations, and Exceptions. Notwithstanding any other provision of this Development Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Project Site:

- (1) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals, provided such fees are consistent with fees and charges imposed generally by City on all new development.
- (2) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure.
- (3) Regulations governing construction standards and specifications, including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code.
- (4) Regulations which are in conflict with the Development Plan provided Developer has given written consent to the application of such regulations to development of the Project Site.
- (5) Regulations required to be adopted by changes in State or Federal law.

B. Subsequent Development Approvals. This Development Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying the Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Development Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or Subsequent Land Use Regulations not in conflict with the Development Plan.

C. Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations enacted after the Effective Date of this Development Agreement prevent or preclude compliance with one or more of the provisions of this Development Agreement, such provisions of this Development Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations and the remainder of this Development Agreement shall remain in full force and effect.

D. Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Project Site separately from or jointly with City. This Development Agreement does not limit the authority of such other public agencies.

## **11. DEVELOPMENT OF THE PROPERTY; TIMING AND CHANGES/AMENDMENTS.**

A. Rights to Develop. Subject to the terms of this Development Agreement, Developer shall have a vested right to develop the Project in accordance with and to the extent of the Development Plan. The Project shall be subject to all Subsequent Development Approvals, if any, required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Development Agreement, the permitted uses of the Project Site, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan. The Project shall be subject to all mitigation measures specified in the Final EIR and Mitigation Monitoring Program as certified and adopted by the Planning Commission on August 16, 2016. In addition, City agrees that (i) the City shall not require any additional land dedications, additional construction of infrastructure improvements or any additional impact mitigation measures beyond those required by the Existing Land Use Approvals, including this Development Agreement, in connection with, and as a condition to, the development and construction of any portion of the Project, and the Project shall not be subject to any such additional requirements imposed pursuant to Future General Regulations or Subsequent Land Use Regulations; and (ii) the Development Exactions imposed in connection with, and as a condition to, the development and construction of any portion of the Project shall be limited to the Development Exactions as set forth on Exhibits C-1 and C-2 and the Project shall not be subject to any additional Development Exactions imposed pursuant to Future General Regulations or Subsequent Land Use Regulations.

B. Timing of Development. It is anticipated that the Infrastructure Improvements will be constructed in conjunction with Developer's development of its travel center and related improvements on the Project Site, as referenced in Recital C. The Parties acknowledge that Developer cannot at this time predict when or the rate at which the Project Site will be developed, since the same depends upon numerous factors which are not within the control of Developer, including without limitation, timing of Developer obtaining fee title to the Project Site, delay in obtaining necessary easement or other rights in third-party property, and market and weather conditions. Since the California Supreme Court held in *Pardee Construction v. City of Camarillo*, 37 Cal. 3d 465 (1984) that the failure of the parties in that case to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Project Site in such order and at such rate and at such times as Developer deems appropriate within the exercise of Developer's subjective business judgment, subject only to any timing requirements set forth in the Existing Development Approvals and the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Project Site shall be deemed to conflict with the Existing Development Approvals and therefore shall not be applicable to the development of the Project Site.

C. Effect of Development Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Development Agreement, the rules, regulations, and official policies governing permitted uses of the Project Site, the density and intensity of use of the property, the maximum height and size of proposed buildings, and the design, improvement, and construction standards and specifications applicable to development of the Project Site shall be the Existing Land Use Regulations. City shall exercise its lawful reasonable discretion in connection with Subsequent Development Approvals in accordance with the Development Plan, and as provided by this Development Agreement. City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters. City may, at the request of Developer, contract for planning and engineering consultant services to expedite the review and processing of Subsequent Development Approvals, the cost of which shall be borne by Developer.

D. Amendments and Modifications.

(1) Major Amendments. Any amendment to this Development Agreement which affects or relates to (a) the term of this Development Agreement; (b) permitted uses of the Project Site; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Project Site or the maximum height or gross square footage of proposed buildings; or (f) monetary contributions by Developer, shall be deemed a "Major Amendment" and shall require giving of notice and a public hearing before the Planning Commission and City Council. Any amendment which is not a Major Amendment shall be deemed a Minor Modification (as further defined in and subject to Section 11(D)(2) below). The City Manager or his or her designee shall have the authority, in his or her reasonable discretion, to determine if an amendment is a Major Amendment subject to this Section 11(D)(1) or a Minor Modification subject to Section 11(D)(2) below. The City Manager's determination may be appealed to the City Council.

(2) Minor Modifications. The Parties acknowledge that refinement and further implementation of the Project may demonstrate that certain minor changes may be appropriate with respect to the details and performance of the Parties under this Development Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project and with respect to those items covered in the general terms of this Development Agreement. If and when the Parties find that clarifications, minor changes, or minor adjustments are necessary or appropriate and do not constitute a Major Amendment under Section 11(D)(1) (each a "Minor Modification"), they shall effectuate such Minor Modification through a written instrument executed by the Developer and City Manager. Unless otherwise required by law or the Municipal Code, no Minor Modification shall require prior notice or hearing, nor shall it constitute an amendment to this Development Agreement.

**12. PERIODIC REVIEW FOR COMPLIANCE WITH DEVELOPMENT AGREEMENT.** In accordance with California Government Code Section 65865.1, City shall review this Development Agreement at least once during every twelve (12) month period from the Effective Date of this Development Agreement, at which time Developer shall demonstrate good faith compliance with the terms of this Development Agreement, as reasonably requested by City. Failure by City in any given calendar year to undertake and complete its annual review of the Agreement shall constitute a finding by City that Developer is in compliance with all of the terms and conditions of this Agreement for that calendar year.

**13. AMENDMENT OR CANCELLATION OF DEVELOPMENT AGREEMENT.** This Development Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties and in the manner provided for in California Government Code Sections 65867, 65867.5, and 65868. The provisions of this Section do not impact the rights or remedies of the Parties (including without limitation, the right to terminate this Development Agreement) in the case of a Developer Default or City Default, as addressed in Section 14 below.

**14. EVENTS OF DEFAULT; REMEDIES.**

A. Default By Developer; City's Remedies. Developer is in default under this Development Agreement (a "Developer Default") if City makes a finding and determination that upon the basis of substantial evidence (as provided to Developer) the Developer has not complied in good faith with one or more of the material terms or conditions of this Development Agreement for ninety (90) days after receipt of written notice thereof, or such longer cure period as agreed to by City. In the case of a Developer Default, City shall conduct a hearing utilizing the periodic review procedures of Section 12 before City may terminate this Development Agreement. In such case, Developer acknowledges that City shall have such termination right because the remedies provided by law, including, but not limited to, damages, are deemed by City to be inadequate to fully remedy a Developer Default and due to the extreme difficulty of assessing with certainty damages for such Developer Default. The above

notwithstanding, if City elects to terminate this Development Agreement, the Developer may challenge such termination by instituting legal proceedings, in which event the court shall exercise its review, based on substantial evidence, as to the existence of cause for termination.

B. Default By City; Developer's Remedies. City is in default under this Development Agreement (a "City Default") if Developer makes a finding and determination that upon the basis of substantial evidence (as provided to City), City has not complied in good faith with one or more of the material terms or conditions of this Development Agreement for ninety (90) days after receipt of written notice thereof, or such longer cure period as agreed to by Developer. In the case of a City Default, Developer may pursue any legal or equitable remedies available to it under this Development Agreement or otherwise.

C. Waiver and Nature of Remedies. No default under this Development Agreement can be waived unless in writing. Waiver of any one default shall not be deemed to be a waiver of any other default of the same or any other provision hereof. Failure or delay in giving written notice of default shall not waive a party's right to give future notice of the same or any other default. Remedies under this Development Agreement shall be deemed cumulative and not exclusive.

D. Limitation of Liability. Notwithstanding anything in this Development Agreement to the contrary, neither party, under any circumstances, shall be liable to the other party for any punitive or exemplary damages arising out of this Development Agreement. This Section 14(D) shall survive termination of the Development Agreement.

15. **UNIFORM CODES.** This Development Agreement does not prevent the City from adopting and amending in compliance with State law certain Uniform Codes which are based on recommendations of a multi-state professional organization and which become applicable throughout the City -- including that portion of the Property subject to this Development Agreement. Such Uniform Codes include, but are not limited to, the *Uniform Building Code, Uniform Mechanical Code, National Electrical Code, and Uniform Fire Code.*

16. **PREVAILING WAGE COMPLIANCE.** Developer shall comply with all state and federal labor laws, including without limitation, those requiring the payment of prevailing wage. All fee credits and the Reimbursement Amount are intended to compensate Developer for no more than the cost associated with the construction and installation of Infrastructure Improvements required as a condition of regulatory approval. In accordance with California Labor Code Section 1720(c)(2), such compliance shall require Developer to pay prevailing wages in connection with the construction of and installation of all Infrastructure Improvements for which Developer is receiving a portion of the Reimbursement Amount or fee or fee credits, but not in connection with the construction of any other portion of the Project.

17. **LANDSCAPE AND LIGHTING MAINTENANCE DISTRICT.** In regard to Avenue 17 and Sharon Boulevard median landscaping comprising part of the Infrastructure Improvements, City and Developer agree to reasonably cooperate in either (i) the creation of a landscape and lighting maintenance district ("LMD"); or (ii) annexing the relevant landscaping site into existing Zone 51 LMD, pursuant to California Streets and Highways Code Section 22500, et seq., for purposes of the payment of operation, maintenance and other covered costs associated with the such landscaping and lighting improvements. In the event City desires to create a new LMD, Developer agrees to reasonably cooperate in the proceedings for such creation by not opposing the formation of the LMD and, as applicable, casting a vote in favor of the LMD's creation; provided that the initial amount of the maximum assessment shall be in accordance with the Engineer's Report prepared for the LMD, and annual adjustments to the special tax shall not exceed the rate of inflation.

**18. PUBLIC HEALTH AND SAFETY CONCERNS; APPLICATION OF FUTURE REGULATIONS.**

A. This Development Agreement does not prevent the City from adopting Future General Regulations and applying such Future General Regulations to the Project and the Project Site, provided that City's City Council adopts findings that a failure to apply such Future General Regulations would create a fire, life, or safety hazard. These findings shall be based upon substantial evidence in the record from a hearing conducted by City's City Council as to which the Developer was provided at least ten (10) days advance written notice.

B. Notwithstanding Section 18(A) above, the City shall not apply to the Project or the Project Site any Future General Regulations which prevent, preclude, or unreasonably delay or alter or in any way affect the implementation of all or any portion of the Development Plan, unless City's City Council, in accordance with subsection (A) above, also makes a finding that such Future General Regulations are reasonably necessary to correct or avoid such injurious or detrimental condition. Any Future General Regulations applied to the Project or the Project Site pursuant to this subsection shall only apply for the duration necessary to correct and avoid such injurious or detrimental condition.

**19. ASSIGNMENT, TRANSFER OR SALE.**

A. Right to Assign. Developer shall have the right to sell, transfer or assign the Project Site in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, *et seq.*) to any person, partnership, joint venture, firm, corporation or other entity at any time during the term of this Development Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights (including the right to receive all or any portion of the Reimbursement Amount), duties, and obligations arising under or from this Development Agreement to the extent reasonably applicable to the transferred portion of the Project Site and be made in strict compliance with the following conditions precedent:

- (1) No sale, transfer, or assignment of any right or interest under this Development Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Project Site. Developer agrees to provide specific notice of this Development Agreement, including the record or document number, where a true and correct copy of this Development Agreement may be obtained from the County Clerk/County Recorder of the County of Madera, in any grant deed or other document purporting to transfer the title or an interest in the Project Site during the term of this Development Agreement or any extension thereof.
- (2) Concurrent with any such sale, transfer, or assignment, or within fifteen (15) business days thereafter, Developer shall notify City, in writing, of such sale, transfer, or assignment and shall provide City with an executed Assignment and Assumption Agreement, substantially in the form specified in Exhibit J, by the purchaser, transferee, or assignee, providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of the Owner/Developer under this Development Agreement to the extent allocable to the portion of the Project Site transferred, other than duties that are expressly reserved and retained by the transferor in such agreement, where the transferor still owns a portion of the Project Site. Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall constitute a default by Developer under this Development Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required under this section, the burdens of this Development Agreement shall be binding upon such purchaser, transferee, or assignee, to the extent allocable to the portion of the Project Site transferred, but the benefits of this Development Agreement shall not inure to such purchaser, transferee, or assignee until and unless such assumption agreement is executed.

- (3) Reorganization Not an Assignment. Notwithstanding anything to the contrary set forth above, the following shall not be deemed an assignment under this Development Agreement: (i) any sale, pledge, assignment or other transfer of all or a portion of the Project Site to an entity directly controlled by Developer or its affiliates and (ii) any change in Developer entity form, such as a transfer from a corporation to a limited liability company or partnership, that does not affect or change beneficial ownership of the Project Site; provided, however, in such event, Developer shall provide to City written notice, together with such backup materials or information reasonably requested by City, within thirty (30) days following the date of such reorganization or City's request for backup information, as applicable.

B. Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, Developer or any successor Owner thereof shall continue to be obligated under this Development Agreement unless Developer or such subsequent Owner is given a release in writing, signed by City, which release shall be provided by City upon the full satisfaction by Developer or such subsequent Owner of all of the following conditions:

- (1) Developer or Owner no longer has a legal interest in all or any part of the Project site except as a beneficiary under a deed of trust; or if such requested release relates only to a portion of the Project site, Developer or Owner no longer has a legal interest in such portion of the Project site except as a beneficiary under a deed of trust.
- (2) Developer or Owner is not then in default under this Development Agreement beyond the applicable cure period.
- (3) Developer or Owner or purchaser has provided City with the notice and executed assumption agreement required under Section 19(A)(2) above.
- (4) Developer or Owner has reimbursed City for any and all reasonable City costs associated with Developer or Owner's transfer of all or a portion of the Project Site.

**20. NOTICE.** Unless expressly provided otherwise in this Development Agreement, any notices, reports, communications, and payments hereunder must be in writing and given by personal delivery or sent by (i) registered or certified mail return receipt requested, postage prepaid, (ii) nationally recognized overnight courier service, or (iii) facsimile transmission, addressed as follows (unless written notice of change thereof is provided):

**To City:**

City Clerk  
City of Madera City Hall  
205 West Fourth Street  
Madera, California 93637  
Facsimile: (559) 674-2972

**With copy to (at same address):**

City Attorney  
Facsimile: (559) 673-1304

**To Landowner:**

Lisa M. Guzman  
7173 North Blackstone Street  
Fresno, CA 93650

**To Developer:**

Love's Country Stores of California, Inc.  
10601 N. Pennsylvania Ave.  
Oklahoma City, OK 73120  
Attention: Kym VanDyke, Project Manager  
Facsimile: (405) 463.3581

**With copy to (at same address):**

General Counsel and Director of Legal Services  
Facsimile: (405) 463.3576

Notice shall be deemed received on the earlier of (a) actual receipt, (b) 3 business days after deposit in the U.S. Mail, (c) the first business day after deposit with an overnight courier, or (d) if by facsimile transmittal, upon receipt of proof of transmission. Any notice or communication not received because of a change of address or facsimile number, without notice to the other party thereof, or refusal to accept delivery, will be deemed received, notwithstanding the same, as set forth above.

**21. MORTGAGEE PROTECTION.** The Parties hereto agree that this Development Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Project Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Project Site, except as limited by the provisions of this section. City acknowledges that the lenders providing such financing may require certain Development Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Development Agreement. Any mortgagee of the Project Site shall be entitled to the following rights and privileges:

A. Neither entering into this Development Agreement nor a breach of this Development Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Project Site made in good faith and for value, unless otherwise required by law.

B. The mortgagee of any mortgage or deed of trust encumbering the Project Site, or any part thereof, which mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Development Agreement.

C. If City receives a timely request from a mortgagee requesting a copy of any notice of default given to Developer under the terms of this Development Agreement, City shall provide a copy of that notice to the mortgagee within ten (10) days of sending the notice of default to Developer. The mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed to Developer under this Development Agreement.

D. Any mortgagee who comes into possession of the Project Site, or any part thereof, by any means, whether pursuant to foreclosure of the mortgage deed of trust, or deed in lieu of such foreclosure or otherwise, shall take the Project Site, or part thereof, subject to the terms of this Development Agreement. Notwithstanding any other provision of this Development Agreement to the contrary, no mortgagee shall have an obligation or duty under this Development Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and further provided that any sale, transfer or assignment by any mortgagee in possession shall be subject to the provisions of Section 19 of this Agreement.



## 22. MISCELLANEOUS.

A. Entire Agreement; Binding Effect. This Development Agreement contains the entire agreement and understanding of Developer and City in regard to the Project and supersedes all negotiations and proposed agreements, whether oral or written, between Developer and City in regard to the subject matter hereof. Each party acknowledges that it has read this Development Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by the other, or the other party's attorneys or representatives, except as expressly set forth in this Development Agreement. This Development Agreement is and shall be binding upon and shall inure to the benefit of the affiliates, subsidiaries, successors, assigns, agents, officers, current employees and administrators of each of Developer and City.

B. Interpretation. Developer and City expressly intend that this Development Agreement shall not be construed against either party, as this Development Agreement was negotiated at arms' length between City and Developer, both of whom were represented by legal counsel, and all of whom contributed to the drafting of this Development Agreement. Any reference within this Development Agreement to a Section shall be construed to reference all Subsections of that referenced Section.

C. Enforcement. Developer and City agree that the Superior Court in Madera County shall have jurisdiction over the implementation and enforcement of this Development Agreement, and shall have the power and authority to make such further or supplemental orders, directions, and other relief as may be necessary or appropriate for the interpretation, enforcement, or carrying out of this Development Agreement.

D. Governing Law. Except as expressly provided in this Development Agreement, all questions with respect to this Development Agreement, and the rights and liabilities of the Developer and City, shall be governed by the laws of the State of California.

E. Further Actions. Each party shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Development Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file of record such required instruments and writings and take any actions as may be reasonably necessary, to implement this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

F. Counterpart Execution. This Development Agreement may be executed in counterparts. When each party has signed and delivered its respective counterpart to the other party, each counterpart shall be deemed an original, and when taken together will constitute one and the same Development Agreement, which will be binding and effective as to Developer and City.

G. Attorneys' Fees. To the extent permitted by law, if either party commences legal action against the other to enforce its rights hereunder, the prevailing party in such action shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental thereto.

H. Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party (and to the extent true), (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature of such default. The party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees of Developer.

I. Enforced Delay, Extension of Times of Performance. In addition to specific provisions of this Development Agreement, all deadlines under this Agreement, including but not limited the deadline for Developer to submit a Substantially Complete Building Permit Application under Section 6(A) shall be extended; and the performance by any Party of its obligations under this Agreement shall not be deemed to be in Default, and the time for performance of such obligation shall be extended where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, acts of terrorism, governmental restrictions or permitting delays imposed or mandated by governmental entities including the City (in the case of another Party relying on the Force Majeure Event), delays in securing or obtaining necessary easements or rights of way, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, seasonal species or habitat surveying or remediation requirements, litigation, or similar bases for excused performance beyond the reasonable control of the party relying thereupon to excuse performance hereunder (each a "Force Majeure Event"). If written notice of such delay is given to City within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted by the City Manager in writing for the period of the enforced delay, or longer as may be mutually agreed upon. In any event, the party relying on any such Force Majeure Event to excuse performance hereunder shall act in good faith, and with due diligence, to recommence performance at the earliest possible date.

J. Indemnity. Developer agrees to and shall defend, indemnify and hold harmless the City, its City Council, boards and commissions, officers, agents, employees, volunteers and other representatives (collectively referred to as "City Indemnified Parties") from and against any and all loss, liability, damages, cost, expense, claims, demands, suits, attorney's fees and judgments (collectively referred to as "Damages"), including but not limited to claims for damage for personal injury (including death) and claims for property damage arising directly or indirectly from the following: (1) for any act or omission of Developer or those of its officers, board members, agents, employees, volunteers, contractors, subcontractors or other persons acting on its behalf (collectively referred to as the "Developer Parties") which occurs during the Term and relates to this Agreement; (2) for any act or omission related to the operations of Developer Parties, including but not limited to the maintenance and operation of areas on the Project Site accessible to the public. Developer's obligation to defend, indemnify and hold harmless applies to all actions and omissions of Developer Parties as described above caused or alleged to have been caused in connection with the Project or Agreement, except to the extent any Damages are caused by the active negligence or willful misconduct of any City Indemnified Parties. This Section 22(J) applies to all Damages suffered or alleged to have been suffered by the City Indemnified Parties regardless of whether or not the City prepared, supplied or approved plans or specifications or both for the Project. During the term of the Agreement, Developer shall maintain insurance in a form and amount acceptable to the City Attorney, with a maximum per-occurrence combined single limit of one million dollars (\$1,000,000), to assure Developer's ability to satisfy the indemnification requirements of this Section 22(J). Developer may satisfy the insurance requirements of this Section through self-coverage or through existing insurance coverage maintained by Developer.

K. City's Right to Defense. The City shall have the right to approve legal counsel retained by Developer to defend any claim, action or proceeding which Developer is obligated to defend pursuant to Section 22(J), which approval shall not be unreasonably withheld, conditioned or delayed. If any conflict of interest results during the mutual representation of the City and Developer in defense of any such action, or if the City is reasonably dissatisfied with legal counsel retained by Developer, the City shall have the right (a) at Developer's costs and expense, to have the City Attorney undertake and continue the City's defense, or (b) with Developer's approval, which shall not be reasonably withheld or delayed, to select separate outside legal counsel to undertake and continue the City's defense.

[EXECUTION PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, City and Developer have agreed to and executed this Development Agreement having an Effective Date of December 28, 20 16 (to be the date of recording, following full execution, with Madera County Clerk/County Recorder).

BY: *[Signature]*  
MAYOR, Andrew J. Medellin

ATTEST:  
*Sonia Alvarez* CITY CLERK

By: Sonia Alvarez  
City Clerk  
(Seal)



APPROVED AS TO FORM:  
*[Signature]*  
City Attorney, Brent Richardson

DATE: 12-28-16

City of Madera  
205 West Fourth Street  
Madera, CA 93637  
(559) 661-5405

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 MADERA    )

On 12/28/16 before me, Sonia Alvarez, City Clerk personally appeared **Andrew J. Medellin**, 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.

  
SONIA ALVAREZ  
City Clerk, City of Madera



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**DESCRIPTION OF ATTACHED DOCUMENT (OPTIONAL)**

**Title or Type of Document:** Development Agreement

**Document Date:**

**Number of Pages:**

**Signer(s) Other Than Named Above:**

**CAPACITY(IES) CLAIMED BY SIGNER(S)**

**Signer's Name:** Andrew J. Medellin

**Signer's Name:**

**Title:** Mayor, City of Madera

**Title:**

DEVELOPER:

LOVE'S COUNTRY STORES OF CALIFORNIA, INC.

By: Douglas J. Stussi

Its: Vice President, CFO and Treasurer

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 Oklahoma )

County of Oklahoma )

On Dec. 23, 2016 before me, Carla Berry  
Date Here Insert Name and Title of Officer

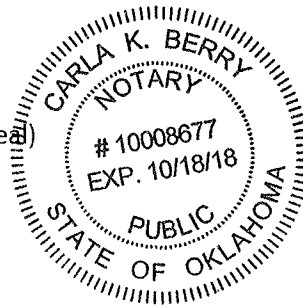
personally appeared Doug Stussi  
Name(s) of Signer(s)  
Vice President, CFO & Treasurer

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 Oklahoma that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Carla K. Berry (Seal)



LANDOWNER:

*Lisa M. Guzman*

LISA M. GUZMAN, TRUSTEE OF THE BYPASS TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013

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 Madera )

On 12/27/16 before me, Sonia Alvarez, Notary Public  
Date Here Insert Name and Title of Officer

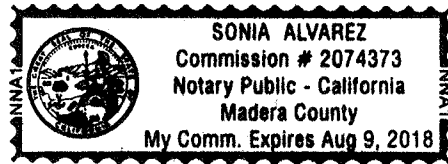
personally appeared Lisa M. Guzman  
Name(s) of Signer(s)

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 Sonia Alvarez (Seal)



LANDOWNER:

*Lisa M. Guzman*

LISA M. GUZMAN, TRUSTEE OF THE SURVIVOR'S TRUST UNDER THE GUZMAN LIVING TRUST DATED MAY 13, 2013

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 *Madera* )

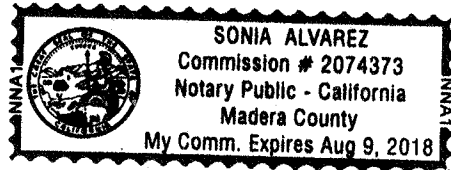
On *12/27/16* before me, *Sonia Alvarez, Notary Public*  
Date Here Insert Name and Title of Officer  
personally appeared *Lisa M. Guzman*  
Name(s) of Signer(s)

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 *Sonia Alvarez* (Seal)



**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 013-240-003**

---

Beginning at the Northeast corner of Section 10, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, County of Madera, State of California; thence along the East line of Section 10, South 0° 10' East 1,331.25 feet to the Southeast corner of the North half of the Northeast quarter of Section 10; thence along the North line of a 51.272 acre tract of land conveyed by Henry Miller to Charles Schmidt, on December 5, 1893, South 89° 55' West 1,029.12 feet along the South line of said North half of the Northeast quarter to a point on the Easterly right of way line of the Southern Pacific Railroad; thence along said Easterly right of way line North 44° 15' West 1,858.76 feet to a point on the North line of Section 10; thence leaving railroad, North 89° 58' East 2,332.30 feet to the point of beginning.

EXCEPTING THEREFROM a road easement over and upon a strip of land 30 feet in width along the North line of and within above described tract of land for use as a right of way easement for a public road, as previously reserved of record.

ALSO EXCEPTING THEREFROM that portion granted to the State of California, in Deed executed by Felisberto da Silva, et al, and recorded February 24, 1971 in Book 1081 Page 532, as Document No. 2225 of Official Records.

AND ALSO EXCEPTING THEREFROM that portion granted to the County of Madera, in Deed executed by Jim Vincenzo Gagliardi, et al, and recorded October 24, 2003 as Document No. 03045789 of Official Records.





LANE ENGINEERS, INC.

CIVIL • STRUCTURAL • SURVEYING

979 N. Blackstone Street

Tulare, California 93274

559.688.5263

www.laneengineers.com

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Lane Project No. 14271

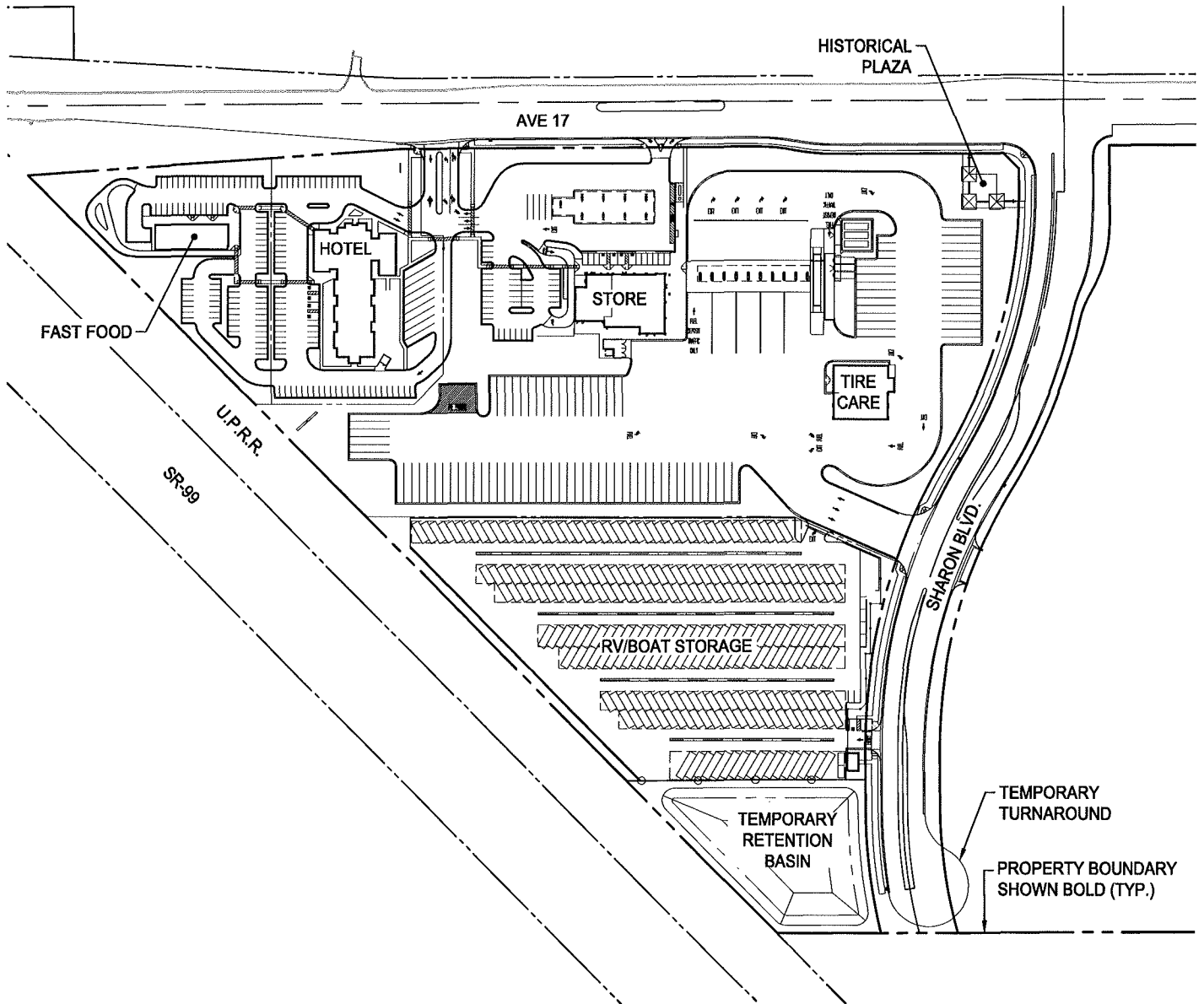


EXHIBIT 'B'  
DEPICTION OF PROJECT SITE



## Development Exactions - Development Impact Fees and Credit Amounts

<u>DESCRIPTION</u>	<u>Base Calculation</u>			<u>Projected Credit Amount</u>		
	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>COST</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>COST</u>
A. TRAVEL STOP						
Administrative Impact Fee	20,054 SF	\$0.024	\$481	0 SF	\$0.024	\$0
Fire Department Impact Fee	20,054 SF	\$0.036	\$722	0 SF	\$0.036	\$0
General Government Impact Fee	20,054 SF	\$0.012	\$241	0 SF	\$0.012	\$0
Police Department Impact Fee	20,054 SF	\$0.072	\$1,444	0 SF	\$0.072	\$0
Public Works Impact Fee	20,054 SF	\$0.133	\$2,667	0 SF	\$0.133	\$0
Sewer Additional Impact Fee	20,054 SF	\$0.169	\$3,389	20,054 SF	\$0.169	\$3,389
Storm Drain Impact Fee	20,054 SF	\$1.210	\$24,265	20,054 SF	\$1.210	\$24,265
Sewer Exist Obl. Impact Fee	20,054 SF	\$0.036	\$722	20,054 SF	\$0.036	\$722
Streets (16 ft Arterial Median)	20,054 SF	\$0.142	\$2,848	20,054 SF	\$0.142	\$2,848
Streets (24 ft Collector Lane)	20,054 SF	\$0.251	\$5,034	20,054 SF	\$0.251	\$5,034
Streets (12 ft Arterial Lane)	20,054 SF	\$0.251	\$5,034	20,054 SF	\$0.251	\$5,034
Transportation Impact Fee	20,054 SF	\$0.254	\$5,094	20,054 SF	\$0.254	\$5,094
Traffic Signal Impact Fee	20,054 SF	\$0.087	\$1,745	20,054 SF	\$0.087	\$1,745
Water Impact Fee (Pipes)	20,054 SF	\$0.072	\$1,444	20,054 SF	\$0.072	\$1,444
Wastewater Treatment Plant Impact Fee	20,054 SF	\$0.763	\$15,301	20,054 SF	\$0.763	\$15,301
Water Impact Fee (Wells)	20,054 SF	\$0.133	\$2,667	20,054 SF	\$0.133	\$2,667
<b>SUB-TOTAL TRAVEL STOP</b>			<b>\$73,097</b>			<b>\$67,542</b>

## Development Exactions - Development Impact Fees and Credit Amounts

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**B. HOTEL**

Administrative Impact Fee	57,792 SF	\$0.024	\$1,387	0 SF	\$0.024	\$0
Fire Department Impact Fee	57,792 SF	\$0.036	\$2,081	0 SF	\$0.036	\$0
General Government Impact Fee	57,792 SF	\$0.012	\$694	0 SF	\$0.012	\$0
Police Department Impact Fee	57,792 SF	\$0.072	\$4,161	0 SF	\$0.072	\$0
Public Works Impact Fee	57,792 SF	\$0.133	\$7,686	0 SF	\$0.133	\$0
Sewer Additional Impact Fee	57,792 SF	\$0.169	\$9,767	57,792 SF	\$0.169	\$9,767
Storm Drain Impact Fee	57,792 SF	\$1.210	\$69,928	57,792 SF	\$1.210	\$69,928
Sewer Exist Obl. Impact Fee	57,792 SF	\$0.036	\$2,081	57,792 SF	\$0.036	\$2,081
Streets (16 ft Arterial Median)	57,792 SF	\$0.142	\$8,206	57,792 SF	\$0.142	\$8,206
Streets (24 ft Collector Lane)	57,792 SF	\$0.251	\$14,506	57,792 SF	\$0.251	\$14,506
Streets (12 ft Arterial Lane)	57,792 SF	\$0.251	\$14,506	57,792 SF	\$0.251	\$14,506
Transportation Impact Fee	57,792 SF	\$0.254	\$14,679	57,792 SF	\$0.254	\$14,679
Traffic Signal Impact Fee	57,792 SF	\$0.087	\$5,028	57,792 SF	\$0.087	\$5,028
Water Impact Fee (Pipes)	57,792 SF	\$0.072	\$4,161	57,792 SF	\$0.072	\$4,161
Wastewater Treatment Plant Impact Fee	57,792 SF	\$0.763	\$44,095	57,792 SF	\$0.763	\$44,095
Water Impact Fee (Wells)	57,792 SF	\$0.133	\$7,686	57,792 SF	\$0.133	\$7,686
<b>SUB-TOTAL HOTEL</b>			<b>\$210,652</b>			<b>\$194,643</b>

## Development Exactions - Development Impact Fees and Credit Amounts

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**C. RESTAURANT PAD**

Administrative Impact Fee	4,400 SF	\$0.024	\$106	0 SF	\$0.024	\$0
Fire Department Impact Fee	4,400 SF	\$0.036	\$158	0 SF	\$0.036	\$0
General Government Impact Fee	4,400 SF	\$0.012	\$53	0 SF	\$0.012	\$0
Police Department Impact Fee	4,400 SF	\$0.072	\$317	0 SF	\$0.072	\$0
Public Works Impact Fee	4,400 SF	\$0.133	\$585	0 SF	\$0.133	\$0
Sewer Additional Impact Fee	4,400 SF	\$0.169	\$744	4,400 SF	\$0.169	\$744
Storm Drain Impact Fee	4,400 SF	\$1.210	\$5,324	4,400 SF	\$1.210	\$5,324
Sewer Exist Obl. Impact Fee	4,400 SF	\$0.036	\$158	4,400 SF	\$0.036	\$158
Streets (16 ft Arterial Median)	4,400 SF	\$0.142	\$625	4,400 SF	\$0.142	\$625
Streets (24 ft Collector Lane)	4,400 SF	\$0.251	\$1,104	4,400 SF	\$0.251	\$1,104
Streets (12 ft Arterial Lane)	4,400 SF	\$0.251	\$1,104	4,400 SF	\$0.251	\$1,104
Transportation Impact Fee	4,400 SF	\$0.254	\$1,118	4,400 SF	\$0.254	\$1,118
Traffic Signal Impact Fee	4,400 SF	\$0.087	\$383	4,400 SF	\$0.087	\$383
Water Impact Fee (Pipes)	4,400 SF	\$0.072	\$317	4,400 SF	\$0.072	\$317
Wastewater Treatment Plant Impact Fee	4,400 SF	\$0.763	\$3,357	4,400 SF	\$0.763	\$3,357
Water Impact Fee (Wells)	4,400 SF	\$0.133	\$585	4,400 SF	\$0.133	\$585
<b>SUB-TOTAL RESTAURANT PAD</b>			<b>\$16,038</b>			<b>\$14,819</b>

## Development Exactions - Development Impact Fees and Credit Amounts

### D. RV/BOAT STORAGE

Administrative Impact Fee	600 SF	\$0.024	\$14	0 SF	\$0.024	\$0
Fire Department Impact Fee	600 SF	\$0.036	\$22	0 SF	\$0.036	\$0
General Government Impact Fee	600 SF	\$0.012	\$7	0 SF	\$0.012	\$0
Police Department Impact Fee	600 SF	\$0.072	\$43	0 SF	\$0.072	\$0
Public Works Impact Fee	600 SF	\$0.133	\$80	0 SF	\$0.133	\$0
Sewer Additional Impact Fee	600 SF	\$0.169	\$101	600 SF	\$0.169	\$101
Storm Drain Impact Fee	600 SF	\$1.210	\$726	600 SF	\$1.210	\$726
Sewer Exist Obl. Impact Fee	600 SF	\$0.036	\$22	600 SF	\$0.036	\$22
Streets (16 ft Arterial Median)	600 SF	\$0.142	\$85	600 SF	\$0.142	\$85
Streets (24 ft Collector Lane)	600 SF	\$0.251	\$151	600 SF	\$0.251	\$151
Streets (12 ft Arterial Lane)	600 SF	\$0.251	\$151	600 SF	\$0.251	\$151
Transportation Impact Fee	600 SF	\$0.254	\$152	600 SF	\$0.254	\$152
Traffic Signal Impact Fee	600 SF	\$0.087	\$52	600 SF	\$0.087	\$52
Water Impact Fee (Pipes)	600 SF	\$0.072	\$43	600 SF	\$0.072	\$43
Wastewater Treatment Plant Impact Fee	600 SF	\$0.763	\$458	600 SF	\$0.763	\$458
Water Impact Fee (Wells)	600 SF	\$0.133	\$80	600 SF	\$0.133	\$80
<b>SUB-TOTAL RV/BOAT STORAGE</b>			<b>\$2,187</b>			<b>\$2,021</b>

**Project Totals**

**\$301,974**

**\$279,025**

## Development Exactions - Traffic and Transportation Mitigation Fees

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>AIR SHARE %</u>	<u>COST</u>
<b>I. INTERSECTIONS</b>				
<b>A. Avenue 17 at SR 99 SB Off Ramp (Install New Traffic Signal)</b>				
Traffic Signal	1 EA	\$400,000.00	13.1%	\$52,400
				<u>\$52,400</u>
<b>B. Avenue 17 at SR 99 NB Ramps (Widen N/B Approach to 2 LT and 3 RT, &amp; Install New Traffic Signal)</b>				
Sawcut Existing Pavement	1700 LF	\$2.00	19.5%	\$663
Remove Existing Pavement	3400 SF	\$2.00	19.5%	\$1,326
General Earthwork and Import	17000 CY	\$15.00	19.5%	\$49,725
Hot Mix Asphalt	1750 TN	\$92.00	19.5%	\$31,395
Aggregate Base	3800 TN	\$32.00	19.5%	\$23,712
Traffic Signal	1 EA	\$400,000.00	19.5%	\$78,000
Traffic Signal Coordination	1 LS	\$10,000.00	19.5%	\$1,950
				<u>\$186,771</u>
<b>C. Avenue 17 at Walden Drive (Install New Traffic Signal)</b>				
Traffic Signal	1 EA	\$350,000.00	2.4%	\$8,225
				<u>\$8,225</u>
<b>E. Sharon Boulevard at Driveway #3 (Install New Traffic Signal)</b>				
Traffic Signal	1 EA	\$350,000.00	60.7%	\$212,450
				<u>\$212,450</u>
<b>F. Avenue 17 at Yeager Drive (Install Traffic Signal)</b>				
Traffic Signal	1 EA	\$350,000.00	2.2%	\$7,700
				<u>\$7,700</u>
<b>II. ROADWAY SEGMENTS</b>				
<b>A. Ave 17 Westbound Expansion (Add 1 Travel Lane Between Sharon and Walden)</b>				
Sawcut Pavement	600 LF	\$2.00	2.3%	\$28
Pavement Removal	1200 SF	\$2.00	2.3%	\$55
General Earthwork and Roadway Excavation	150 CY	\$5.00	2.3%	\$17
Hot Mix Asphalt	350 TN	\$92.00	2.3%	\$741
Class 2 Aggregate Base	1000 TN	\$32.00	2.3%	\$736
				<u>\$1,577</u>

## Development Exactions - Traffic and Transportation Mitigation Fees

### III. SR 99 FREEWAY AND RAMPS

#### A. SR 99 SB Loop On-Ramp (Widen Ramp to Add 1 Lane)

Sawcut Pavement	850 LF	\$1.50	18.1%	\$230
Pavement Removal	1700 SF	\$2.00	18.1%	\$614
General Earthwork and Import	2000 CY	\$15.00	18.1%	\$5,415
Hot Mix Asphalt	600 TN	\$92.00	18.1%	\$9,964
Class 2 Aggregate Base	1250 TN	\$32.00	18.1%	\$7,220
				<b>\$23,442</b>

#### B. SR 99 NB Off-Ramp (Widen Ramp to add 1 exit lane, & Auxiliary Lane)

Sawcut Pavement	1300 LF	\$2.00	13.3%	\$345
Pavement Removal	2600 SF	\$2.00	13.3%	\$689
General Earthwork and Roadway Excavation	1700 CY	\$5.00	13.3%	\$1,126
Hot Mix Asphalt	1050 TN	\$92.00	13.3%	\$12,800
Class 2 Aggregate Base	2500 TN	\$32.00	13.3%	\$10,600
				<b>\$25,559</b>

#### C. SR 99 NB On-Ramp (Widen Ramp to Add 1 Lane)

Sawcut Pavement	1500 LF	\$2.00	41.8%	\$1,254
Pavement Removal	3000 SF	\$2.00	41.8%	\$2,508
General Earthwork and Import	10000 CY	\$15.00	41.8%	\$62,700
Hot Mix Asphalt	1000 TN	\$92.00	41.8%	\$38,456
Class 2 Aggregate Base	2200 TN	\$32.00	41.8%	\$29,427
				<b>\$134,345</b>

#### D. SR 99 SB Off-Ramp (Widen Ramp to Add 1 Lane)

Sawcut Pavement	850 LF	\$2.00	54.4%	\$925
Pavement Removal	1700 SF	\$2.00	54.4%	\$1,850
General Earthwork and Roadway Excavation	1400 CY	\$5.00	54.4%	\$3,808
Hot Mix Asphalt	850 TN	\$92.00	54.4%	\$42,541
Class 2 Aggregate Base	1850 TN	\$32.00	54.4%	\$32,205
				<b>\$81,328</b>

## Development Exactions - Traffic and Transportation Mitigation Fees

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INTERCHANGE RELATED SUBTOTAL	\$503,846
CITY STREETS/ROADS SUBTOTAL	\$229,952

<b>GRAND TOTAL</b>	<b>\$733,798</b>
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### NOTES:

1. The improvements described herein are based on the Final EIR and associated traffic study, certified by the City of Madera Planning Commission on 8/16/2016.
2. Improvements highlighted in orange, are improvement required within Caltrans R/W.
3. Traffic Signal, Hot Mix Asphalt, and Class 2 Aggregate Base Costs are based on the Avenue 17/SR-99 Project Study Report (PSR).
4. This estimate excludes costs related to mobilization, bonding, traffic control and other off-site related costs not specifically mentioned in this cost estimate.
5. This estimate is intended to provide an order-of-magnitude cost only. It is not based on a set of construction drawings.
6. Costs are based on prevailing wages.
7. Agency fees are included in this estimate to the extent they are listed.
8. Fees or costs associated with work related to dry utilities are not included in this estimate.



## General Description of Infrastructure Improvements, Costs, and Reimbursable Amounts

IMPROVEMENT DESCRIPTION	TOTAL INFRASTRUCTURE IMPROVEMENT COST				REIMBURSABLE AMOUNT			
	QUANTITY	UNIT	UNIT COST	COST	QUANTITY	UNIT COST	COST	
<b>I. AVENUE 17 ROADWORK</b>								
A.1 Avenue 17 Road Excavation [P]1	6,000	CY	\$10.00	\$60,000	6,000	CY	\$10.00	\$60,000
A.2 Avenue 17 Road Excavation [AO]1	2,000	CY	\$10.00	\$20,000	-	CY	\$10.00	\$0
A.7 Avenue 17 Pavement Removal	25,909	SF	\$2.00	\$51,818	25,909	SF	\$2.00	\$51,818
A.9 West Avenue 17 Pavement (7.0" A.C. / 8.5" A.B.) [P]1	16,379	SF	\$5.75	\$94,179	16,379	SF	\$5.75	\$94,179
A.10 West Avenue 17 Pavement (7.0" A.C. / 8.5" A.B.) [AO]1	6,728	SF	\$5.75	\$38,686	-	SF	\$5.75	\$0
A.11 East Avenue 17 Pavement (7.0" A.C. / 23" A.B.) [P]1	43,031	SF	\$8.00	\$344,248	43,031	SF	\$8.00	\$344,248
A.12 East Avenue 17 Pavement (7.0" A.C. / 23" A.B.) [AO]1	18,332	SF	\$8.00	\$146,656	-	SF	\$8.00	\$0
A.19 Sawcut Pavement (Avenue 17)	2,585	LF	\$2.00	\$5,170	2,585	LF	\$2.00	\$5,170
E.1 Traffic Control	1	LS	\$40,000.00	\$40,000	1	LS	\$40,000.00	\$33,200
Subtotal Direct Costs Avenue 17 Roadwork - Minus Curb & Gutter				\$800,757				\$588,615
<i>Subtotal Ave 17 Soft and Indirect Costs [Note 3]</i>				\$273,432				\$201,049
<b>Total Avenue 17 Costs</b>				<b>\$1,074,189</b>				<b>\$789,664</b>
<b>II. SHARON BOULEVARD ROADWORK</b>								
A.3 Sharon Boulevard Road Excavation [P]1	7,500	CY	\$10.00	\$75,000	7,500	CY	\$10.00	\$75,000
A.4 Sharon Boulevard Road Excavation [AO]1	2,500	CY	\$10.00	\$25,000	-	CY	\$10.00	\$0
A.13 North Sharon Boulevard Pavement (6.5" A.C. / 19.5" A.B.) [P]1	37,654	SF	\$7.00	\$263,578	37,654	SF	\$7.00	\$263,578
A.14 North Sharon Boulevard Pavement (6.5" A.C. / 19.5" A.B.) [AO]1	20,202	SF	\$7.00	\$141,414	-	SF	\$7.00	\$0
A.15 South Sharon Boulevard Pavement (6.5" A.C. / 14.0" A.B.) [P]1	15,743	SF	\$6.25	\$98,394	15,743	SF	\$6.25	\$98,394
A.16 South Sharon Boulevard Pavement (6.5" A.C. / 14.0" A.B.) [AO]1	13,897	SF	\$6.25	\$86,856	-	SF	\$6.25	\$0
A.17 Temporary A.C. Pavement (2.5" A.C. / 6.5" A.B.)	7,521	SF	\$2.75	\$20,683	-	SF	\$2.75	\$0
Subtotal Direct Costs Sharon Boulevard Road Work - Minus Curb & Gutter				\$710,924.75				\$436,972
<i>Subtotal Sharon Boulevard - Soft and Indirect Costs [Note 3]</i>				\$242,757				\$149,253
<b>Total Sharon Boulevard Road Work - Minus Curb &amp; Gutter</b>				<b>\$953,682</b>				<b>\$586,225</b>

**III. CURB AND GUTTER - ALL STREETS**

A.21	Curb & Gutter	2,879	LF	\$14.00	\$40,306	-	LF	\$14.00	\$0
	<i>Subtotal Curb and Gutter - Soft and Indirect Costs [Note 3]</i>				\$13,763				\$0
	<b>Total Curb and Gutter - All Streets - Costs</b>				<b>\$54,069</b>				<b>\$0</b>

**IV. SIDEWALKS - ALL STREETS**

A.25	Concrete Sidewalk [P]1	5,145	SF	\$4.00	\$20,580	5,145	LF	\$4.00	\$20,580
A.26	Concrete Sidewalk [AO]1	11,463	SF	\$4.00	\$45,852	-	SF	\$4.00	\$0
	Subtotal Direct Costs Sidewalks				\$66,432				\$20,580
	<i>Subtotal Sidewalks Soft and Indirect Costs [Note 3]</i>				\$22,684				\$7,029
	<b>Total Sidewalks - All Streets - Costs</b>				<b>\$89,116</b>				<b>\$27,609</b>

**V. MEDIAN ISLAND IMPROVEMENTS - ALL STREETS**

A.22	Median Curb	2,286	LF	\$16.00	\$36,576	2,286	LF	\$16.00	\$36,576
A.23	Median Concrete	2,259	SF	\$5.00	\$11,295	2,259	SF	\$5.00	\$11,295
A.24	12" A.C. Dike	780	LF	\$15.00	\$11,700	780	LF	\$15.00	\$11,700
E.5	Sharon Blvd. Median Landscaping/Irrigation	6,562	SF	\$5.00	\$32,810	6,562	SF	\$5	\$32,810
	Subtotal Direct Costs Median Islands				\$92,381				\$92,381
	<i>Subtotal Median Island - Soft and Indirect Costs [Note 3]</i>				\$31,545				\$31,554
	<b>Total Median Island Costs</b>				<b>\$123,926</b>				<b>\$123,935</b>

**VI. TRAFFIC SIGNALS**

E.2	Traffic Signal (Ave 17 & Driveway #1)	1	LS	\$300,000.00	\$300,000	1	LS	\$300,000	\$300,000
E.3	Traffic Signal (Ave 17 & Sharon Blvd.)	1	LS	\$300,000.00	\$300,000	1	LS	\$300,000	\$300,000
	Subtotal Direct Costs Traffic Signal Improvements				\$600,000				\$600,000
	<i>Subtotal Traffic Signal - Soft and Indirect Costs [Note 3]</i>				\$204,880				\$204,937
	<b>Total Traffic Signal Costs</b>				<b>\$804,880</b>				<b>\$804,937</b>

**VII. MISCELLANEOUS STREET IMPROVEMENTS (UTILITIES & MISC. CONSTRUCT.)**

E.6	Parkway Landscaping/Irrigation [P]1	14,065 SF	\$5.00	\$70,325	14,065 SF	\$5	\$70,325
E.7	Parkway Landscaping/Irrigation [AO]1	8,052 SF	\$5.00	\$40,260	- SF	\$5	\$0
E.8	Dry Utility Trenching, Conduits, Pull Boxes	3,600 LF	\$50.00	\$180,000	- LF	\$50	\$0
E.9	Street Lights (LED)	14 EA	\$4,500.00	\$63,000	- EA	\$4,500	\$0
E.10	Street Signage and Striping	1 LS	\$50,000.00	\$50,000	0.72 LS	\$50,000	\$36,042
Subtotal Direct Costs Miscellaneous Street Costs				\$403,585			\$106,367
<i>Subtotal Miscellaneous Street and Utilities - Soft and Indirect Costs [Note 3]</i>				\$137,811			\$36,331
<b>Total Miscellaneous Street and Utilities Costs</b>				<b>\$541,396</b>			<b>\$142,698</b>

**VIII. RAMP IMPROVEMENTS**

A.5	SR-99 N/B Ramp Import and Earthwork	12,000 CY	\$15.00	\$180,000	12,000 CY	\$15.00	\$180,000
A.8	N/B Off-ramp Pavement Removal	7,800 SF	\$2.00	\$15,600	7,800 SF	\$2.00	\$15,600
A.18	N/B Ramp Pavement (9.0" A.C. / 21.0" A.B.)2	20,000 SF	\$9.50	\$190,000	20,000 SF	\$9.50	\$190,000
A.20	Sawcut Pavement (SR-99 N/B Off Ramp)	1,000 LF	\$2.00	\$2,000	1,000 LF	\$2.00	\$2,000
E.11	SR-99 N/B Off-Ramp Signage and Striping	1 LS	\$25,000.00	\$25,000	1.00 LS	\$25,000	\$25,000
E.12	SR-99 N/B Off-Ramp Retaining Walls and other Misc.	1 LS	\$400,000.00	\$400,000	1.00 LS	\$400,000	\$400,000
Subtotal Direct Costs Ramp Improvements				\$812,600			\$812,600
<i>Subtotal Ramp Improvements - Soft and Indirect Costs [Note 3]</i>				\$277,476			\$277,554
<b>Total Ramp Improvements Costs</b>				<b>\$1,090,076</b>			<b>\$1,090,154</b>

**IX. SANITARY SEWER**

B.1	Connect to Existing Sewer	1 EA	\$2,200.00	\$2,200	1.00 EA	\$2,200	\$2,200
B.2	15" PVC - Non Parcel Frontage	2,324 LF	\$80.00	\$185,920	2,324 LF	\$80	\$185,920
B.3	15" PVC - Along Parcel Frontage	1,280 LF	\$80.00	\$102,400	1,280 LF	\$68	\$86,400
B.4	15" PVC (including trench repair)	1,006 LF	\$110.00	\$110,660	1,006 LF	\$110	\$110,660
B.5	24" PVC (including trench repair)	319 LF	\$235.00	\$74,965	319 LF	\$235	\$74,965
B.6	48" Diameter Sanitary Sewer Manhole	11 EA	\$4,700.00	\$51,700	11 EA	\$4,700	\$51,700
B.7	48" Diameter Sanitary Sewer Manhole (in existing pavement)	5 EA	\$8,000.00	\$40,000	5 EA	\$8,000	\$40,000
Subtotal Direct Costs Sanitary Sewer Improvements				\$567,845			\$551,845
<i>Subtotal Sanitary Sewer - Soft and Indirect Costs [Note 3]</i>				\$193,900			\$188,489
<b>Total Sanitary Sewer Costs</b>				<b>\$761,745</b>			<b>\$740,334</b>

**X. CITY STORM DRAINAGE FACILITY**

C.1	30" CL III RCP	1,318 LF	\$120.00	\$158,160	1,318 LF	\$120	\$158,160
C.2	18" CL III RCP	1,473 LF	\$58.00	\$85,434	1,473 LF	\$58	\$85,434
C.3	12" CL III RCP	236 LF	\$55.00	\$12,980	236 LF	\$55	\$12,980
C.4	12" CL III RCP (in existing pavement)	90 LF	\$95.00	\$8,550	90 LF	\$95	\$8,550
C.5	Storm Drain Manhole	7 EA	\$6,000.00	\$42,000	7 EA	\$6,000	\$42,000
C.6	Temporary Drain Inlet	3 EA	\$2,000.00	\$6,000	3 EA	\$2,000	\$6,000
C.7	Curb Inlet	7 EA	\$5,200.00	\$36,400	7 EA	\$5,200	\$36,400
Subtotal Direct Costs City Storm Drain Improvements				\$349,524			\$349,524
<i>Subtotal City Storm Drain - Soft and Indirect Costs [Note 3]</i>				\$119,351			\$119,384
<b>Total City Storm Drainage Facility Costs</b>				<b>\$468,875</b>			<b>\$468,908</b>

**XI. UN-USED IMPROVEMENT CATEGORY**

**XII. WATER SYSTEM IMPROVEMENTS**

D.1	24" PVC Main, incl. gate valves - Non Parcel Frontage	2,278 LF	\$215.00	\$489,770	2,278 LF	\$215	\$489,770
D.2	24" PVC Main, incl. gate valves - Along Parcel Frontage	2,500 LF	\$215.00	\$537,500	2,500 LF	\$203	\$506,250
D.3	24" PVC Main (including trench repair)	44 LF	\$235.00	\$10,340	44 LF	\$235	\$10,340
D.4	Fire Hydrant Assembly	4 EA	\$5,500.00	\$22,000	4 EA	\$0	\$0
D.5	Connect to Existing Water	1 EA	\$5,700.00	\$5,700	1 EA	\$5,700	\$5,700
Subtotal Direct Costs Water System Improvements				\$1,065,310			\$1,012,060
<i>Subtotal Water System - Soft and Indirect Costs [Note 3]</i>				\$363,768			\$345,682
<b>Total Water System Costs</b>				<b>\$1,429,078</b>			<b>\$1,357,742</b>

**XIII. OFF-SITE TRAFFIC MITIGATION FEES**

	<b>Cumulative Year Traffic Mitigation Fees</b>	<b>1 LS</b>	<b>\$733,798</b>	<b>\$733,798</b>	<b>1.00 LS</b>	<b>\$733,798</b>	<b>\$733,798</b>
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TOTAL INFRASTRUCTURE IMPROVEMENT COSTS\*

\$8,124,831

TOTAL REIMBURSEMENT AMOUNT\*

\$6,866,004

\*A Municipal Water Well will be developed as part of the Infrastructure Improvements. The Costs of the Water Well are not included in this Schedule of Costs and Reimbursements, though 100% of Well Development Costs are eligible for Reimbursement.

NOTES:

- 1.) [R] = Project Frontage or Other Project Improvement  
[AO] = Additional "Oversized" Improvement Required by City
- 2.) Northbound Off-ramp pavement section is based on Caltrans Project Study Report (PSR).
- 3.) Soft and Indirect Costs Include Contingencies (10%), Engineering (10%), Contractor Overhead (10%); Traffic Control, Construction Staking, Plan Check and Inspection



LANE ENGINEERS, INC.

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Tulare, California 93274

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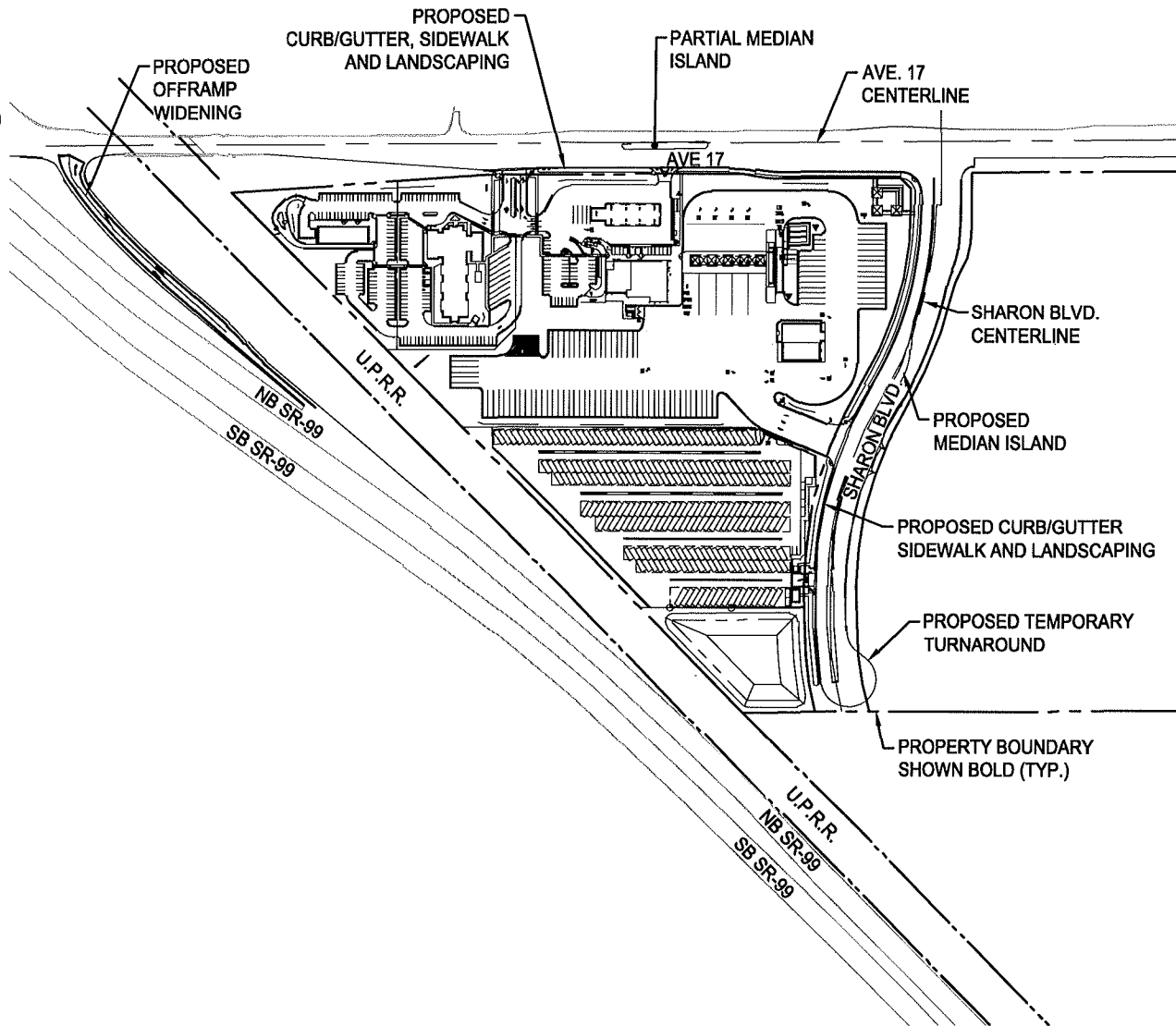


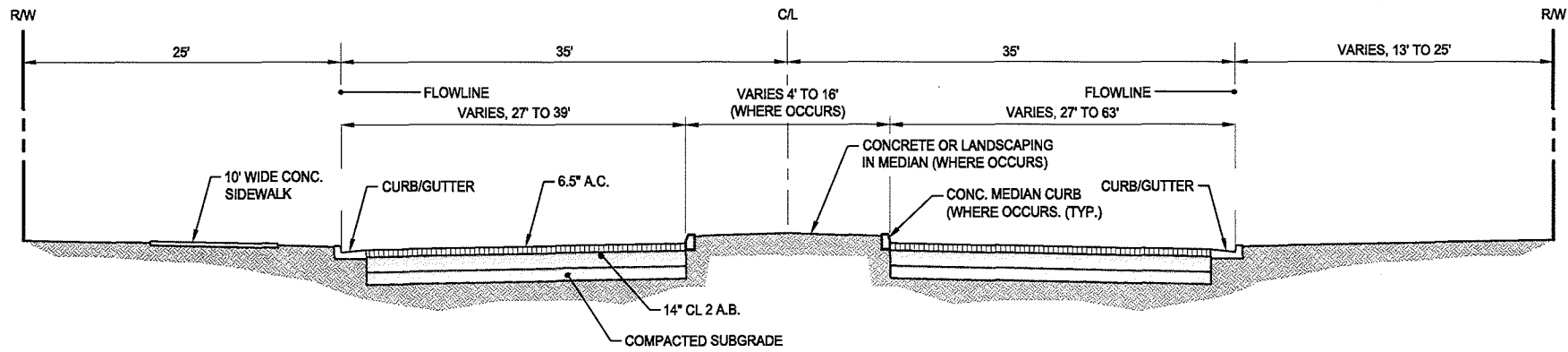
EXHIBIT 'E'  
ROADWAY IMPROVEMENTS



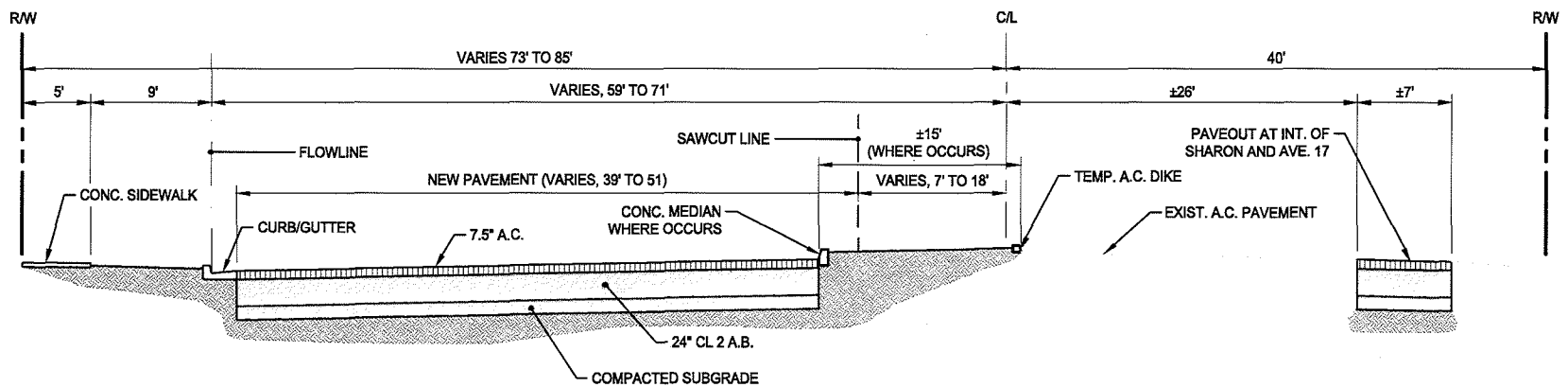


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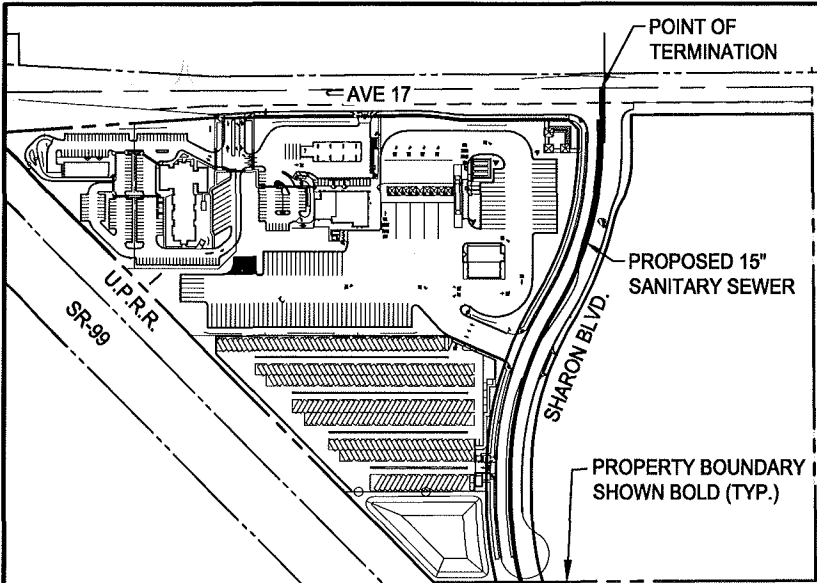


**SHARON BOULEVARD STREET SECTION (LOOKING NORTH)**



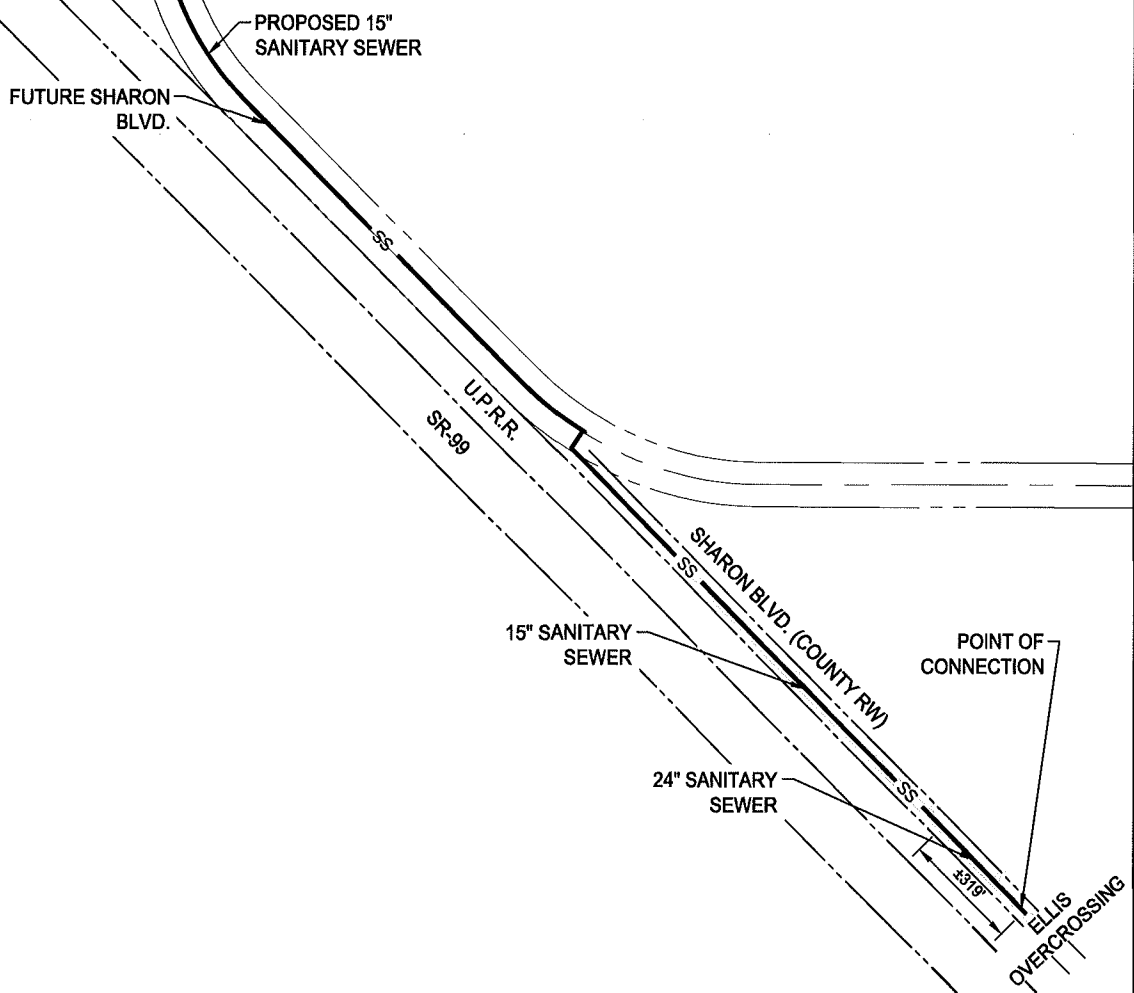
**AVENUE 17 STREET SECTION (LOOKING NORTH)**

**EXHIBIT 'E'**  
**ROADWAY IMPROVEMENTS**



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**EXHIBIT 'F'**  
**SEWER IMPROVEMENTS**

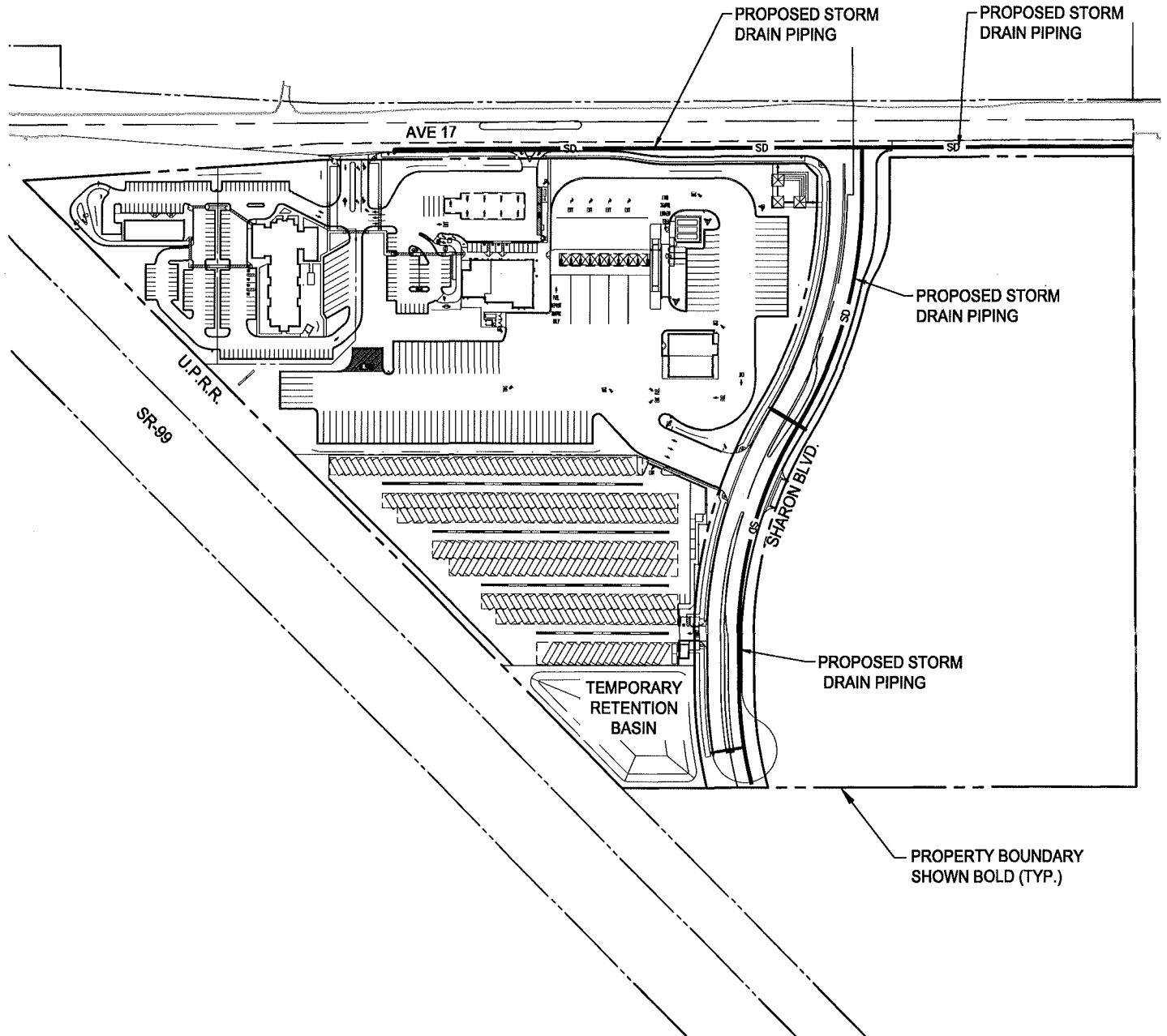






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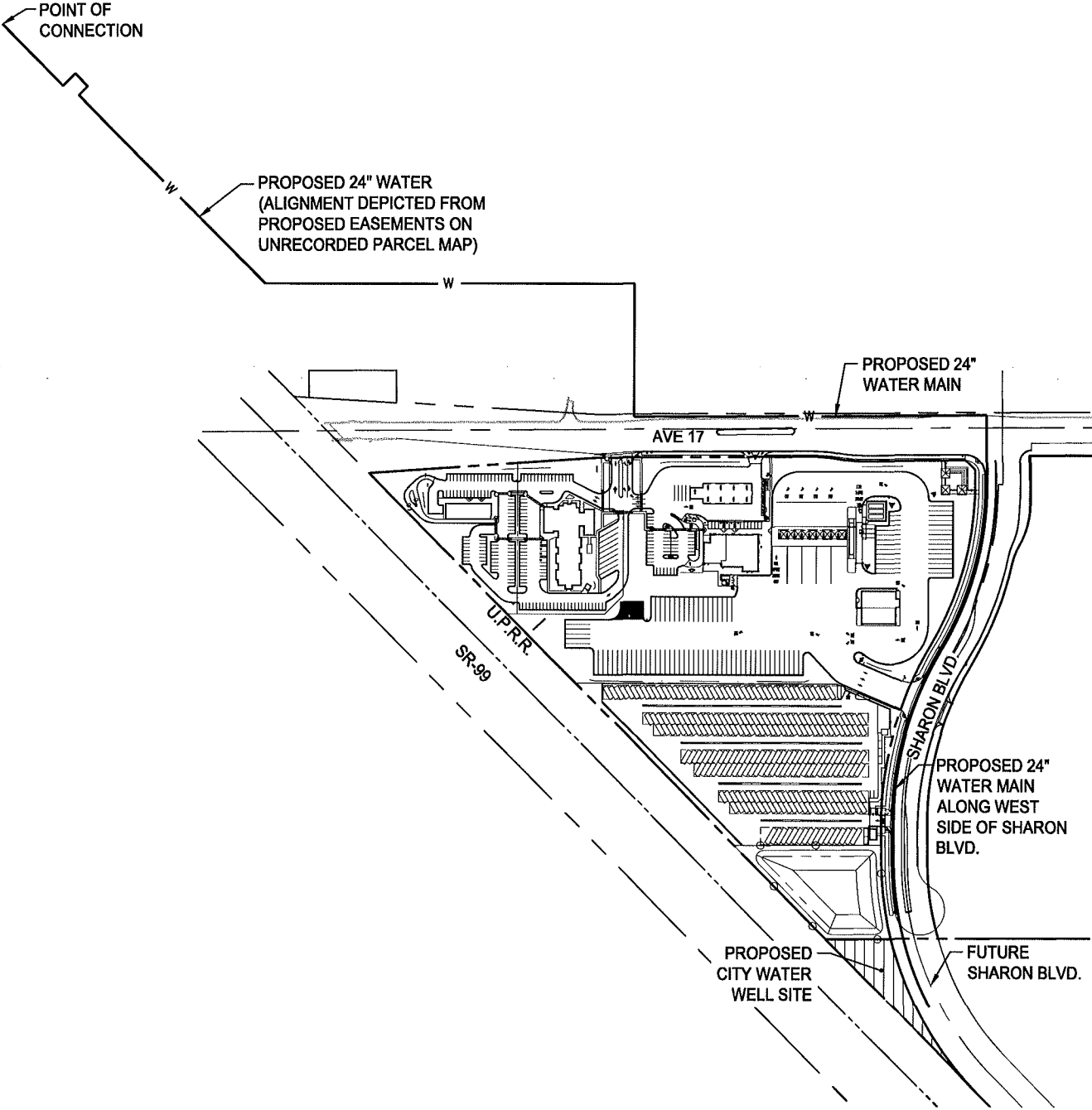
**EXHIBIT 'G'**  
**STORM DRAIN IMPROVEMENTS**





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**EXHIBIT 'H'**  
**WATER IMPROVEMENTS**





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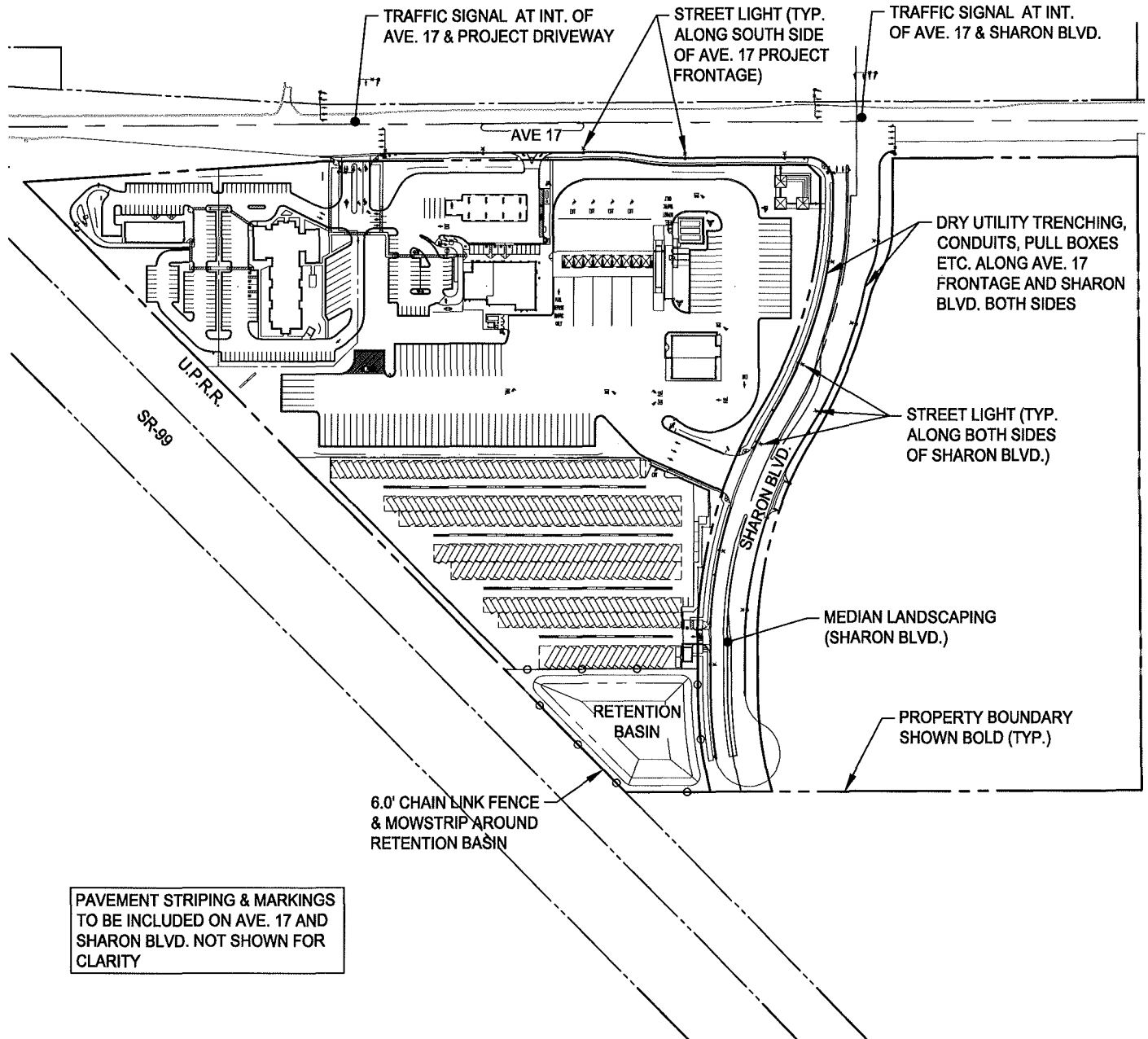


EXHIBIT 'I'  
DRY UTILITY AND MISC. IMPROVEMENTS



EXHIBIT J

Form of Assumption and Assignment Agreement

OFFICIAL BUSINESS

Document entitled to free recording  
Government Code Section 6103

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Madera  
205 West Fourth Street  
Madera, CA 93637  
Attn: City Clerk

---

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made by and between Love's Country Stores of California, Inc., a California Corporation ("Love's"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

RECITALS

1. On \_\_\_\_\_, 2016, the City of Madera and Love's entered into that certain "Development Agreement" (the "Development Agreement"). Pursuant to the Development Agreement, Love's agreed to develop the Project Site (as that term is defined in the Development Agreement) as set forth in the Development Agreement. The Development Agreement was recorded against the Property in the Official Records of Madera County on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. 20\_\_\_\_ - \_\_\_\_\_.
2. Love's intends to convey the Project Site (or a portion thereof) to Assignee, as more particularly identified and described in Exhibit A attached hereto and incorporated herein by this reference (the "Assigned Parcel").
3. Love's desires to assign and Assignee desires to assume all of Love's right, title, interest, burdens and obligations under the Development Agreement with respect to and as related to the Assigned Parcel.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, Love's and Assignee hereby agree as follows:

1. Love's hereby assigns, effective as of its conveyance of the Assigned Parcel to Assignee, all of the rights, title, interest, burdens and obligations of Love's under the Development Agreement with respect to the Assigned Parcel. Love's retains all the rights, title, interest, burdens and obligations under the Development Agreement with respect the Project Site other than the Assigned Parcel, if any.

2. Assignee hereby assumes all of the rights, title, interest, burdens and obligations of Love's under the Development Agreement with respect to the Assigned Parcel, and agrees to observe and fully perform all of the duties and obligations of Love's under the Development Agreement with respect to the Assigned Parcel. The parties intend hereby that, upon the execution of this Agreement and conveyance of the Assigned Parcel to Assignee, Assignee shall become substituted for Love's as the "Developer" under the Development Agreement with respect to the Assigned Parcel.

3. 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.

4. The Notice Address described in the Development Agreement with respect to the Assigned Parcel shall be:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. This Agreement may be signed in identical counterparts.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Love's Country Stores  
of California, Inc.

ASSIGNEE:

\_\_\_\_\_

\_\_\_\_\_

a \_\_\_\_\_

a \_\_\_\_\_

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

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

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

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

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

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

**ORDINANCE NO. 939 C. S.**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA AMENDING THE OFFICIAL CITY OF MADERA ZONING MAP TO REZONE APPROXIMATELY 2.15 ACRES LOCATED ON THE SOUTH SIDE OF THE FRESNO RIVER CHANNEL BETWEEN THE NORTH A STREET AND NORTH C STREET ALIGNMENTS FROM THE R3 (RESIDENTIAL) TO THE PD-6000 (PLANNED DEVELOPMENT) ZONE DISTRICT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MADERA AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Madera and this Council have held public hearings upon the rezoning of this property and have determined that the proposed rezoning is consistent with the General Plan as amended and subsequent development will be in conformance with all standards and regulations of the Municipal Code

SECTION 2. The City of Madera Zoning Map as provided for in Chapter 3 of Title X of the Madera Municipal Code is hereby amended as illustrated in the hereto attached Exhibit "A", and more specifically described in attached Exhibit "B." Unless the adoption of this amendment to the Zoning Map is lawfully stayed, thirty-one (31) days after adoption of this amendment, the Planning Director and City Clerk shall cause these revisions to be made to the City of Madera Zoning Map which shall indicate the date of adoption of this revision and be signed by the Planning Director and City Clerk.

SECTION 3. Based upon the testimony and information presented at the hearing, the adoption of the proposed rezoning is in the best interest of the City of Madera, and the Council hereby approves the rezoning based on the following findings, and conditions:

FINDINGS:

1. THE PROPOSED REZONE WILL PROVIDE THE REQUIRED CONSISTENCY BETWEEN THE PROPOSED GENERAL PLAN AMENDMENT AND ZONING.
2. THE REZONE IS NOT EXPECTED TO BE DETRIMENTAL TO THE HEALTH, SAFETY, PEACE, COMFORT OR GENERAL WELFARE OF THE NEIGHBORHOOD OR THE CITY.
3. CITY SERVICES AND UTILITIES ARE AVAILABLE OR CAN BE EXTENDED TO SERVE THE AREA.

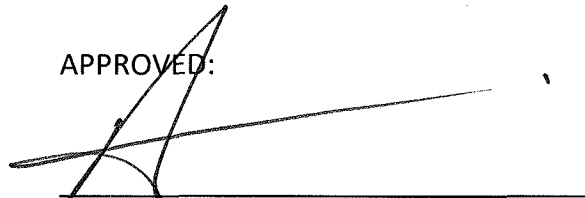
SECTION 4. This Ordinance shall be effective and of full force and effect at 12:01 a.m. on the thirty-first day after its passage.

\* \* \* \* \*

The foregoing Ordinance No. 939 C.S. was introduced and given its first reading at a regular meeting of the City Council of the City of Madera held on the 1<sup>st</sup> day of February, 2017 and adopted after a second reading at a regular meeting of the City Council held on the 15<sup>th</sup> day of February, 2017 by the following vote:

- AYES: Mayor Medellin, Council Members Foley Gallegos, Rodriguez, Holley, Robinson, Oliver.
- NOES: None.
- ABSTENTIONS: None.
- ABSENT: Council Member Rigby.

APPROVED:



ANDREW J. MEDELLIN, Mayor

ATTEST:



SONIA ALVAREZ, City Clerk

APPROVED AS TO LEGAL FORM:



BRENT RICHARDSON, City Attorney



EXHIBIT "A"  
ZONING MAP FOR SUBJECT PROPERTY





EXHIBIT "B"  
LEGAL DESCRIPTION OF SUBJECT PROPERTY

**Those parcels identified by the County of Madera Assessors Office, Assessor's Map No. 07-02, Madera Unified School District, City of Madera, County of Madera, California 1956, "Johnson's Addn." with the following Assessor Parcel Numbers: 007-022-002 and 007-022-014.**

**and**

**Those parcels identified by the County of Madera Assessors Office, Assessor's Map No. 07-03, Madera Unified, City of Madera, County of Madera, California 1956, "Sec. 13 T.11S. R.17E. Johnson's Addition" with the following Assessor Parcel Numbers: 007-031-001, 007-031-002, 007-031-004, 007-031-005, 007-031-016, 007-031-017, 007-031-018, and 007-031-019.**

**ORDINANCE NO. 940 C.S.**  
**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA**  
**AMENDING CHAPTER 3 OF TITLE V OF THE MADERA MUNICIPAL CODE**  
**RELATING TO COLLECTION OF REFUSE & RECYLING**

**WHEREAS**, it is necessary for the City to further refine regulations relating to the collection of refuse & recycling within the City.

**WHEREAS**, the City has considered the totality of the Municipal ordinance pertaining to the collection of refuse & recycling and has determined that certain provisions are needed for the effective implementation and protection of the City's health.

**THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA,**  
**DOES ORDAIN AS FOLLOWS:**

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein by reference.

Section 2. Subsection (A) of Section 02, of Chapter 3, of Title V, of the Madera Municipal Code is hereby amended to read as follows:

**§ 5-3.02 CHARGES FOR REFUSE COLLECTION AND RECYCLING SERVICES**

(A) All occupied premises within the city shall have refuse and recycling collection services for the collection, removal, and disposal of refuse and recycling of recyclable materials produced upon the premises for which services a charge shall be collected. [All commercial business that generates food waste shall maintain organic waste recycling collection service required by the State of California as provided through the City and shall segregate all organic food waste being disposed of from other waste as defined in sections 42649.8 et seq. of the Public Resources Code.] The charges for such services shall be based upon the average volume of refuse and recycling of materials presented for disposal and from the services necessary in order to facilitate recycling collection and refuse disposal as determined by the City Administrator or his/her designee. All charges for these services shall be established by resolution of the Council pursuant to the provisions of this chapter, which resolution shall provide for additional charges for special services over and above those contemplated in this chapter. If any customer is delinquent in payment for services for 90 days or more, the city may remove any or all waste containers.

Section 3. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or void for any other reason.

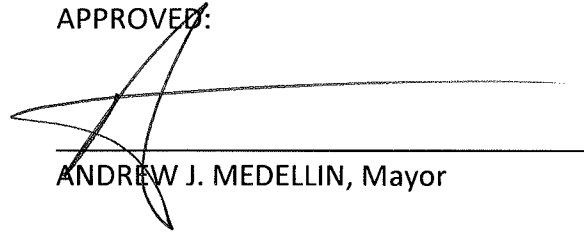
Section 4. Effective Date. This ordinance shall be effective and of full force and effect at 12:01 a.m. on the 31<sup>st</sup> day after its passage.

\* \* \* \* \*

The foregoing Ordinance No. 940 C.S. was introduced and given its first reading at a regular meeting of the City Council of the City of Madera held on the 1<sup>st</sup> day of March, 2017 and adopted after a second reading at a regular meeting of the City Council held on the 15<sup>th</sup> day of March, 2017 by the following vote:

AYES: Mayor Medellin, Council Members Foley Gallegos, Rodriguez, Holley, Robinson, Oliver, Rigby.  
NOES: None.  
ABSTENTIONS: None.  
ABSENT: None.

APPROVED:



ANDREW J. MEDELLIN, Mayor

ATTEST:



SONIA ALVAREZ, City Clerk

APPROVED AS TO LEGAL FORM:



BRENT RICHARDSON, City Attorney



AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA, AMENDING PORTIONS OF CHAPTER 5 OF TITLE IV OF  
THE MADERA MUNICIPAL CODE PERTAINING TO TAXICABS

THE CITY COUNCIL OF THE CITY OF MADERA DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 4-5.01 of Chapter 5 of Title IV, of the Madera Municipal Code is hereby amended to read as follows:

§ 4-5.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

~~CODE ENFORCEMENT DIRECTOR. The Director of the Code Enforcement Department of the city, or his or her designee.~~

DRIVER. Every person in charge of, or operating, any passenger-carrying or motor propelled vehicle, as defined in this section, either as agent, employee, or otherwise of the owner, as owner, or under the direction of the owner.

DROP CHARGE. The initial charge made on the taximeter when the ride begins.

INSPECTION REPORT. A document from an approved automotive repair facility certifying that a particular vehicle meets all vehicle safety standards set forth in this chapter and in regulations adopted pursuant to this chapter.

OWNER. Every person having the use or control of any passenger-carrying automobile or motor- propelled vehicle, as defined in this section, whether as owner, lessee, or otherwise.

QUALIFIED AUTOMOTIVE REPAIR FACILITY. A repair facility certified by the State of California to perform safety inspections and repairs.

STREET. Any place commonly used for the purpose of public travel.

TAXICAB. Any motor vehicle designed for carrying not more than ten passengers, including the driver operated in the streets of the city other than over a defined or fixed route, for the transportation of persons for hire at the direction of the passengers.

TAXICAB DRIVERS PERMIT. A permit issued pursuant to this chapter, to a person for the privilege of operating a taxicab.

TAXICAB PERMIT. A permit issued pursuant to this chapter for the operation of a taxicab on city streets.

TAXICAB PERMITTEE. The person or company in whose name taxicab permits and taxicab driver permits are issued.

TAXIMETER. Any instrument or device attached to a taxicab, and designed or intended to measure mechanically or electronically the distance traveled by such taxicab, or to record the time the taxicab is in waiting, and to indicate, by figures or designs, the fare to be charged in dollars and cents.

SECTION 2. Subsection (A) of Section 4-5.03 of Chapter 5 of Title IV is hereby amended as follows:

- (A) Any person desiring to secure a taxicab permit shall submit an application therefor to the ~~Code Enforcement Director~~ [City Administrator or his or her designee]. The application shall be in a form approved by the ~~Code Enforcement Director~~ [City Administrator or his or her designee] and shall include the following:

SECTION 3. Subsection (A)(5) of Section 4-5.03 of Chapter 5 of Title IV is hereby amended as follows:

- (5) Such other and further information as the ~~Code Enforcement Director~~ [City Administrator or his or her designee] may require.

SECTION 4. Subsection (A) of Section 4-5.04 of Chapter 5 of Title IV is hereby amended as follows:

- (A) The ~~Code Enforcement Director~~ [City Administrator or his or her designee], with the assistance of the Police Chief or his or her designee, shall cause an investigation to be made of the facts stated in the taxicab permit application, and shall, within 60 days, determine the following:

SECTION 5. Subsection (B) of Section 4-5.04 of Chapter 5 of Title IV is hereby amended as follows:

- (B) If the ~~Code Enforcement Director~~ [City Administrator or his or her designee] makes a finding unfavorable to the applicant, with respect to any of the above factors, the ~~Code Enforcement Director~~ [City Administrator or his or her designee] shall deny issuance of the permit and shall give the applicant prompt written notice of such finding and decision. The notice shall include a statement of the specific reasons for denial, including any complaints received against any applicant presently holding a permit and a notice that the applicant has a right to file an appeal under Chapter 4 of Title I of this code.

SECTION 6. Subsection (C) of Section 4-5.04 of Chapter 5 of Title IV is hereby amended as follows:

- (C) Should the ~~Code Enforcement Director~~ [City Administrator or his or her designee] report conclude that the applicant meets the requirements of this chapter, ~~including § 4-5.05,~~ the ~~Code Enforcement Director~~ [City Administrator or his or her designee] shall issue such permit or permits. Each permit shall be numbered and shall state the name and address of the permittee and the date of issuance. One permit shall be issued for each taxicab. The fees ~~deposited~~ [paid] by unsuccessful applicants shall not be refunded.

SECTION 7. Section 4-5.05 of Chapter 5 of Title IV is hereby deleted in its entirety.

SECTION 8. Section 4-5.06 of Chapter 5 of Title IV is hereby amended as follows:

Any person desiring to secure a taxicab driver's permit shall submit an application therefor to the ~~Code Enforcement Director~~ [City Administrator or his or her designee]. The application shall be in a form approved by the ~~Code Enforcement Director~~ [City Administrator or his or her designee] and shall include the following:

SECTION 9. Subsection (F) of Section 4-5.06 of Chapter 5 of Title IV is hereby amended as follows:

(F) A report of a ~~physical examination~~ [Department of Transportation exam] within the last 12 months, by a doctor of medicine, showing the applicant to be in a proper physical condition to operate a taxicab safely;

SECTION 10. Subsection (J) of Section 4-5.06 of Chapter 5 of Title IV is hereby amended as follows:

(J) Such other information as the ~~Code Enforcement Director~~ [City Administrator or his or her designee] may require. The application shall be under penalty of perjury, and shall not be accepted unless it is clearly filled out in full with all required information and is accompanied by the nonrefundable permit fee designated in the Master Fee Resolution.

SECTION 11. Subsections (K) and (L) of Section 4-5.06 of Chapter 5 of Title IV are hereby added as follows:

[(K) Provide an approved Live Scan background check.

[(L) A 10 year history driving record issued by the California Department of Motor Vehicles.]

SECTION 12. Subsection (A) of Section 4-5.07 of Chapter 5 of Title IV is hereby amended as follows:

(A) The ~~Code Enforcement Director~~ [City Administrator or his or her designee], with the assistance of the Police Chief or his or her designee, shall cause an investigation to be made of the facts stated in the application and shall, within 30 days, determine the following:

(1) Whether the applicant has had a taxicab driver's permit revoked for any cause within the last 24 months, has ever had a taxicab driver's permit revoked for a cause involving reckless

driving or drunkenness, or has had an application for a taxicab driver's permit denied within the last six months;

(2) Whether any statement made in the application is false;

(3) Whether the taxicab driver's permit has not been paid;

(4) Whether the applicant has been convicted within the last five years of a crime involving moral turpitude or a conviction of use, possession or sale of a controlled substance within the past three years, [or a conviction including any of the following:

- Any crimes listed in 290 CPC
- DUI-Within 5 years of the Date of Fingerprinting
- Vehicle theft
- Fraud
- Stolen Property
- Crimes of Violence
- Any felony crime relating to narcotics or any controlled substance
- Any other crimes enumerated in 2432.3 of the CVC
- Actively on parole or on any form of probation
- Crimes resulting in the applicant becoming a Sex, Arson, or Narcotics Registrant
- Other felony or violent misdemeanor conviction];

(5) Whether any fact exists that would be cause for suspension or revocation of a taxicab driver's permit because of a violation of any of the terms of this article or rules promulgated pursuant thereto;

(6) Whether the applicant possesses a valid California Class "B" driver's license or a Class "C" license and documentation of the required medical examination for a Class "B" license;

(7) Whether the applicant has submitted three recent pictures, has been fingerprinted, and has presented proof of a physical examination within the last 12 months showing the applicant to be in a proper physical condition to operate a taxicab.

SECTION 13. Subsection (B) of Section 4-5.07 of Chapter 5 of Title IV is hereby amended as follows:

~~(B)The Code Enforcement Director~~ [City Administrator or his or her designee] may deny issuance of a permit in the event he or she makes a finding adverse to the applicant with respect to any of the above factors. If a permit is denied, the ~~Code Enforcement Director~~ [City Administrator or his or her designee] shall give the applicant prompt written notice of such decision. The notice shall include a statement of the specific reasons for denial including any complaints received against any applicant currently holding a permit.

SECTION 14. Subsection (C) of Section 4-5.07 of Chapter 5 of Title IV is hereby amended as follows:

~~(C) If the Code Enforcement Director [City Administrator or his or her designee] concludes that the applicant meets the requirements of this chapter, the Code Enforcement Director [City Administrator or his or her designee] shall issue the taxicab driver's permit.~~

SECTION 15. Section 4-5.08 of Chapter 5 of Title IV is hereby amended as follows:

(A) No vested right or property interest of any type is acquired by a taxicab permit or taxicab driver's permit issued to any person under this chapter.

(B) All taxicab permits and taxicab driver's permits are revocable and subject to suspension in accordance with the provisions of this chapter, and are to be exercised only in conformance with the regulations provided in this chapter.

(C) A permittee shall not permit any right or privilege granted by his or her permit to be exercised by another, nor shall his or her permit or any interest therein or any right or privilege there under be sold, transferred, leased, assigned or otherwise disposed of except as provided in this chapter. A transfer in violation of this subsection shall be grounds for revocation or suspension of the permit. Upon the death of any taxicab permittee, the permit may be exercised by the executor or administrator of the deceased permittee's estate during the period of estate administration. The period shall not exceed one year from the permittee's death.

(1) A deceased permittee's surviving heir(s) who inherits the permittee's entire taxicab company may reapply for taxicab permits in an amount equal to the permits possessed by the deceased permittee.

(2) A permittee may sell his/her taxicab company, or one or more taxicabs, to another current permittee without invoking any minimum permit regulations in force at that time. The permittee purchasing the taxicabs may then apply for taxicab permits for all the taxicabs for which the selling company possessed permits. Any permittee purchasing such taxicabs who is otherwise not required to operate under a radio-dispatched system shall be required to so operate as a result of such purchase.

~~-(D) Taxicab driver's permits are annual permits which expire on the following thirtieth day of June, provided, that whenever a taxicab driver's permit has been applied for and issued within a period of 60 days before June 30, it shall be valid when issued and may be issued for the next ensuing year. Application for renewal must be received by the Code Enforcement Director [City Administrator or his or her designee] before expiration of the permit and will require a records update from the Police Department and will, if permittee has been arrested within the past 12 months, require the permittee to be fingerprinted. The Code Enforcement Director [City Administrator or his or her designee] shall determine whether the permittee possesses a valid California Class "B" driver's license or a Class "C" license with the required medical examination.~~

~~-(E) The renewal fee for each taxicab permit shall be the annual amount designated in the Master Fee Resolution and shall be paid at such times designated in the Master Fee Resolution. If any permit is not exercised, the fee shall not be refunded. The fee required is a permit fee and shall not be deemed to be in lieu of a business license tax as required by the provisions of this code. Prior to the payment of the annual permit renewal fee for a taxicab permit the permittee must submit a valid State of California vehicle registration card.~~

~~-(F) The renewal fee for a taxicab driver's permit shall be the annual amount designated in the Master Fee Resolution. If any permit is not exercised, the fee shall not be refunded.~~



~~(G) A permittee who has a taxicab permit but does not exercise this permit due to the taxicab vehicle being out-of-service, wrecked, unavailable for service, or without liability insurance, for a period of 180 days shall automatically forfeit that permit, except for those vehicles mentioned in subsection (H) of this section.~~

[(D) The renewal fee for each taxicab permit shall be the annual amount designated in the Master Fee Resolution. If any permit is not exercised, the fee shall not be refunded. The fee required is a permit fee and shall not be deemed to be in lieu of a business license tax as required by the provisions of this code. Prior to the payment of the annual permit renewal fee for a taxicab permit the permittee must submit a valid State of California vehicle registration card.

(E) A permittee who has a taxicab permit but does not exercise this permit due to the taxicab vehicle being out-of-service, wrecked, unavailable for service, or without liability insurance, for a period of 180 days shall automatically forfeit that permit, except for those vehicles mentioned in subsection (H) of this section.

(F) Taxicab driver's permits are annual permits which expire on the following thirtieth day of June, provided, that whenever a taxicab driver's permit has been applied for and issued within a period of 60 days before June 30, it shall be valid when issued and may be issued for the next ensuing year. Application for renewal must be received by the Code Enforcement Director [City Administrator or his or her designee] before expiration of the permit and will require a records update from the Police Department and will, if permittee has been arrested within the past 12 months, require the permittee to be fingerprinted. The Code Enforcement Director [City Administrator or his or her designee] shall determine whether the permittee possesses a valid California Class "B" driver's license or a Class "C" license with the required medical examination.

(G) The renewal fee for a taxicab driver's permit shall be the annual amount designated in the Master Fee Resolution. If any permit is not exercised, the fee shall not be refunded.]

(H) Each taxicab permit holder may have one additional vehicle, which must be permitted, insured, and otherwise ready for use, for every three permits he or she holds.]

SECTION 16. Section 4-5.12 of Chapter 5 of Title IV is hereby amended as follows:

Subject to the general control of the City Administrator, the regulation of taxicab permits shall be within the power and duties of the ~~Code Enforcement Director~~ [City Administrator or his or her designee]. The ~~Code Enforcement Director~~ [City Administrator or his or her designee] shall immediately inform the Police Chief [or his or her designee] of the suspension or revocation of taxicab permits or taxicab driver's permits for any reason.

SECTION 17. Subsection (A) of Section 4-5.13 of Chapter 5 of Title IV is hereby amended as follows:

(A) The ~~Code Enforcement Director~~ [City Administrator or his or her designee] is hereby empowered to make rules and regulations not inconsistent with the provisions of this chapter as may be necessary or desirable to aid in the enforcement of the provisions and purposes of this chapter. The rules and regulations may include, but are not limited to, a system of identification and numbering of taxicabs and drivers.

SECTION 18. Subsection (B) of Section 4-5.14 of Chapter 5 of Title IV is hereby amended as follows:

(B) Color. Each taxicab of any permittee shall be of a distinctive uniform color scheme, and no vehicle covered by the terms of this chapter shall be operated whose color scheme, identifying design, monogram, or insignia to be used herein shall, in the opinion of the ~~Code Enforcement Director~~ [City Administrator or his or her designee], conflict with or imitate any color scheme, design, monogram or insignia used on or in a vehicle or vehicles operating under another taxicab permit of the city, or pursuant to any other law or statute, in such manner as to be misleading or intended to deceive or defraud the public. Taxicabs may bear an advertising sign, space, or placard on the rear thereof, which shall not be of a size so as to interfere with the vision of the driver or a view of the license plate, name, or permittee, or number of taxicab.

SECTION 19. Subsection (C)(2) of Section 4-5.14 of Chapter 5 of Title IV is hereby amended as follows:

(2) Exterior signs. There shall be on the outside of each taxicab, signs, cards or plates, of a durable or permanent nature, showing the permittee's taxicab business name, taxicab permit number, current telephone number and rate structure. The taxicab business name and telephone number shall be displayed prominently on both sides of the taxicab. The taxicab's rate structure shall be displayed on both sides of the taxicab in the manner prescribed in the ~~Code Enforcement Director~~ [City Administrator or his or her designee's] rules and regulations.

SECTION 20. Subsection (C)(3) of Section 4-5.14 of Chapter 5 of Title IV is hereby amended as follows:

(3) Interior signs. There shall be displayed in the passenger compartment of each taxicab, in full view of the passenger, a sign or card of heavy material not less than four inches by eight inches in size, securely attached, providing the following information in letters and numbers as large as the size of the sign will allow: the name of the taxicab permittee and any fictitious name under which the taxicab operates, the current business address and telephone number of the permittee, a correct schedule of the rates to be charged for conveyance in the taxicab, and the name, address and telephone number of the agency issuing the taxicab permit, i.e., the ~~Code Enforcement Director~~ [City Administrator or his or her designee] of the City of Madera.

SECTION 21. Subsection (D) of Section 4-5.14 of Chapter 5 of Title IV is hereby amended as follows:

(D) Prior to the issuance of any new taxicab permit and at the discretion of the ~~Code Enforcement Director~~ [City Administrator or his or her designee] and at least once a year, the owner shall present to the ~~Code Enforcement Director~~ [City Administrator or his or her designee]

an inspection report by a qualified automotive repair facility [which must be a certified inspection facility by the Bureau of Automotive Repair,] certifying that an inspection involving the mileage, engine, gears, transmission, brake system, lighting system, exhaust and air pollution control system, tires and wheels has taken place and the automobile complies with all federal and state safety requirements along with any other items specified by the ~~Code Enforcement Director~~ [City Administrator or his or her designee]. Throughout the duration of a permit all taxicabs shall be maintained in a clean and mechanically safe condition.

SECTION 22. Subsection (H) of Section 4-5.14 of Chapter 5 of Title IV is hereby amended as follows:

(H) Only objects required by law or approved by the ~~Code Enforcement Director~~ [City Administrator or his or her designee] may be placed on taxicab vehicle windows in conformance with Cal. Veh. Code § 26078. Nothing shall be placed on any portion of the taxicab vehicle which blocks the driver's vision. All windows and the windshield shall be kept clean and clear.

SECTION 23. Section 4-5.15 of Chapter 5 of Title IV is hereby amended as follows:

At a time specified by the ~~Code Enforcement Director~~ [City Administrator or his or her designee], each taxicab shall be inspected by the ~~Code Enforcement Director~~ [City Administrator or his or her designee] to ascertain compliance with the requirements of this chapter. If such inspection reveals a significant safety hazard, the permit shall be automatically suspended, and the taxicab shall immediately be ordered out of service. Prior to being placed back in service, the taxicab shall be re-inspected to determine that the deficiency has been corrected. An inspection fee for a rescheduled inspection or a re-inspection will be charged as designated in the Master Fee Schedule.

SECTION 24. Subsection (A) of Section 4-5.16 of Chapter 5 of Title IV is hereby amended as follows:

(A) The existence of a significant safety hazard shall be grounds for the automatic suspension of a taxicab permit by the ~~Code Enforcement Director~~ [City Administrator or his or her designee]. The taxicab shall immediately be ordered out of service. Prior to being placed back in service, the permittee shall submit to the ~~Code Enforcement Director~~ [City Administrator or his or her designee] verification from a qualified mechanic approved by the ~~Code Enforcement Director~~ [City Administrator or his or her designee] that the deficiency has been corrected.

SECTION 25. Subsection (C) of Section 4-5.17 of Chapter 5 of Title IV is hereby amended as follows:

(C) Each taxicab driver shall wear a nametag having the driver's first name, driver number, and current picture attached to the driver's breast pocket or other readily visible location at all times

while the driver is operating a taxicab for hire. The driver's permit shall be readily available at all times for inspection by the ~~Code Enforcement Director~~ [City Administrator or his or her designee] or a Police Officer, while the driver is operating a taxicab.

SECTION 26. Subsection (G) of Section 4-5.17 of Chapter 5 of Title IV is hereby amended as follows:

(G) Taxicab drivers shall comply with all the reasonable requests of a passenger, including but not limited to the giving of their name, permit number, the taxicab permit number, and informing the passenger of the complaint form available in the ~~Code Enforcement~~ [Neighborhood Revitalization] Department.

SECTION 27. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or void for any other reason.

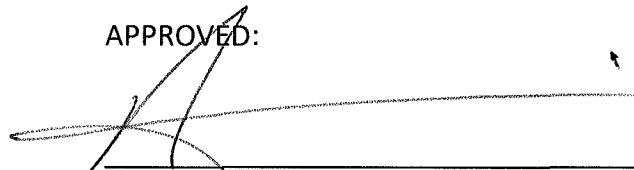
SECTION 28. This Ordinance shall be effective and of full force and effect at 12:01 a.m. on the thirty-first day after its passage.

\* \* \* \* \*

The foregoing Ordinance No. 941 C.S. was introduced and given its first reading at a regular meeting of the City Council of the City of Madera held on the 17<sup>th</sup> day of May, 2017 and adopted after a second reading at a regular meeting of the City Council held on the 7<sup>th</sup> day of June, 2017 by the following vote:

AYES: Mayor Medellin, Council Members Foley Gallegos, Rodriguez, Holley, Robinson, Oliver.  
NOES: None.  
ABSTENTIONS: None.  
ABSENT: Council Member Rigby.

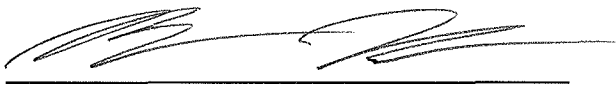
APPROVED:

  
\_\_\_\_\_  
ANDREW J. MEDELLIN, Mayor

ATTEST:

  
\_\_\_\_\_  
SONIA ALVAREZ, City Clerk

APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
BRENT RICHARDSON, City Attorney

ORDINANCE NO. 942 C.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA,  
CALIFORNIA AMENDING THE MADERA MUNICIPAL CODE TO ADD  
CHAPTER 16 TO TITLE IV PERTAINING TO  
RENTAL HOUSING INSPECTIONS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MADERA AS FOLLOWS:

SECTION 1. Title IV of the Madera Municipal Code is hereby amended to add Chapter 16, "Rental Housing Inspections," to read as follows:

**["CHAPTER 16"**

**RENTAL HOUSING INSPECTIONS**

**§ 4-16.01 Purpose and findings.**

The City Council of the City of Madera recognizes that local government can and shall develop and preserve decent affordable housing and at the same time provide services to the most vulnerable in our communities. According to 2014 US Census estimates there are more than 8,500 Rental Housing Units within the City of Madera, which is approximately half of all housing units in the City. The City has a significant interest in ensuring that rental housing remains a desirable housing option for its citizens.

Preventing or eliminating slums and blight and addressing community development needs have a particular urgency because rental housing often deteriorates over time, resulting in substandard housing conditions. These substandard conditions adversely affect the economic values of neighboring structures and pose a serious and immediate threat to the health or welfare of a community. In many cases, property Owners choose not to make the necessary repairs to avoid financial expenses, and tenants do not report such deficiencies out of lack of knowledge of the City's role in correcting substandard housing conditions or because they fear retaliatory evictions.

In order to ensure compliance of Rental Housing Units with minimum standards of health and safety, on a city wide basis, routine inspections need to be conducted. It is the intent of the Madera City Council to enact a Rental Housing Inspection Program that would reasonably guarantee compliance with minimum standards. Such a program is in the best interest of the public as it would protect the supply of decent, safe and sanitary housing.

**§ 4-16.02 Definitions.**

For the purpose of this Chapter, the following terms, phrases and words shall have the meanings given:

**"COMMON AREAS"** are those areas that are available for shared use by all tenants, (or) groups of tenants and their invitees.

**"ENGAGE IN THE BUSINESS OF RENTAL HOUSING"** means renting or offering to rent a Rental Housing Unit.

**"INSPECTOR"** means any employee of the City authorized by the City Administrator to conduct inspections in accordance with the provisions of this Chapter.

**"LOCAL"** within 40 road/driving miles distance of the subject property.

**"OWNER"** means the last known owner of record or person having recorded title to the property according to records maintained by the County of Madera County Recorder's Office.

**"RENTAL HOUSING PROPERTY"** means a parcel of real property, as shown on the latest equalized tax assessment role as maintained by the Assessor of the County of Madera, upon which a Rental Housing Unit is maintained.

**"RENTAL HOUSING UNIT"** means a single unit of residence for a Single Housekeeping Unit of one or more persons, that is being rented, or is intended to be rented, where such rental occupancy is for a period of more than thirty (30) days. Examples of housing units covered by this Chapter include, but are not limited to, apartment units, condominiums, duplexes and single-family houses. "Rental Housing Unit" also includes other types of residential units that provide for sleeping accommodations but toileting or cooking facilities are shared by occupants of more than one unit, such as residential or single room occupancy hotels. This does not include units used for transient lodging such as dormitories, group homes, rooming or boarding houses, hotels, motels, and bed and breakfast inns.

**"RENT"** means to grant the possession or enjoyment of, in exchange for money or any other consideration.

**"SELF-CERTIFICATION PROGRAM"** is a designation given to a section of the Rental Housing Inspection Program where the Owner or Local contact representative of a property assumes the role of inspector for a portion of the regular periodic inspections and reports findings back to the City of Madera.

**"SINGLE HOUSEKEEPING UNIT"** means any household whose members are a non-transient interactive group of persons jointly occupying a dwelling unit, including joint access to and use of all common areas including living, kitchen and eating areas within the dwelling unit, and sharing household activities, and responsibilities such as meals, chores, expenses and

maintenance, and whose makeup is determined by the members of the unit rather than by the landlord, property manager, or other third party. This does not include a boarding or rooming house.

#### **§ 4-16.03 Scope.**

(A) The provisions of this Chapter shall apply to all existing residential Rental Housing Properties and Rental Housing Units located within the Madera City limits.

(B) The provisions of this Chapter shall be supplementary and complementary to all of the provisions of this Code, State law and any law cognizable at common law or equity, and nothing herein shall be construed, read, or interpreted in any manner so as to limit any existing right or power of the City of Madera to abate and prosecute any and all nuisances or to enforce any other conditions in violation of state or local codes, including, but not limited to, any building, housing, property maintenance and public nuisance ordinances.

#### **§ 4-16.04 Exemptions.**

(A) Unless otherwise specified in this section, the following Rental Housing Units shall be exempt from the requirements of this Chapter:

(1) Rental Housing Units that are subject to routine periodic inspections by another government agency, where Rental Housing Units are inspected at least once every three years to address substandard building violations as defined in Health and Safety Code § 17920.3; or

(2) Rental Housing Units that, within the past ten years, either have been issued a certificate of occupancy or have passed final inspection by the City of Madera.

(B) A Rental Housing Unit that is determined to be exempt pursuant to § 4-16.04(A), above, shall become subject to the requirements of this Chapter if an Administrative Citation relating to the Rental Housing Property is issued pursuant to the provisions of this code.

(C) Any Rental Housing Unit subject to the requirements of this Chapter pursuant to § 4-16.04(B), above, shall become exempt from the requirements of this Chapter if all of the following circumstances exist:

(1) After the last inspection conducted pursuant to this Chapter, the inspector determines that either no violations exist on the property or the violations identified in an Administrative Citation were abated within 30 days; and

(2) The property Owner is not delinquent on any payment to the City of fees, penalties, taxes or any other monies related to the property.

(D) At such time that it is sufficiently demonstrated that a property is maintained in compliance with the requirements of this code, that property shall become exempt from the requirements of this code for a period of time not to exceed 6 years. Units may become temporarily exempt from the requirements of this Chapter if:

(1) No violations of this Chapter existed after two consecutive routine



inspections.

(E) A Rental Housing Property that is determined to be temporarily exempt pursuant to § 4-16.04(D) above, shall become subject to the requirements of this Code if:

- (1) A valid complaint is lodged against such property and a notice of violation is issued regardless of subsequent correction.
- (2) A change in ownership occurs.

**§ 4-16.05 License and Registration required.**

(A) It shall be unlawful for any person to engage in the business of rental housing, unless:

(1) A City of Madera Rental business license is obtained by the Owner of such Rental Housing Unit(s) and all properties located within the limits of the City of Madera that are owned by the same Owner are listed under such Rental Business License and an accurate account of the gross receipts are provided. Pursuant to Madera Municipal Code § 6-1.22 & 6-1.28. and

(2) Each Rental Housing Unit is registered with the City pursuant to subsection 4-16.05(B) of this section; and

(3) All fees associated with the provisions of this Chapter are paid when payment is due.

(B) A Rental Housing Unit is registered with the City when the Owner of the corresponding Rental Housing Property submits the following to the Neighborhood Revitalization Department:

(1) A completed registration form, made available by the City, that contains the following information:

(a) Description of the Rental Housing Property, including, but not limited to, the street address and Assessor's Parcel Number;

(b) Quantity and description of all Rental Housing Units on the Rental Housing Property;

(c) Name and current contact information for the Owner of the Rental Housing Property;

(d) Name and current contact information for the Local contact representative as described in Section § 4-16.08 of this code; and

(e) Any other information as reasonably required by the City Administrator or his or her designee.

(f) The contact information shall remain confidential and for internal City use only, to the extent allowed by law.

(2) The Rental Housing Inspection Program fee, and

(3) Any outstanding fees that were previously imposed pursuant to this Chapter.

(C) It is unlawful for any person to knowingly make a false statement of fact or knowingly omit any information that is required to register a Rental Housing Unit pursuant to this section.

(D) Registration shall be valid for a period of three years or until one of the

following circumstances occurs, whichever is sooner:

(1) The Owner fails to notify the Rental Housing Inspections Division of any change in the information submitted pursuant to § 4-16.05(B) of this section, within 30 days of such change; or

(2) The Owner fails to pay any of the Rental Housing Inspection Program fees.

**§ 4-16.06 Inspections required.**

(A) All Rental Housing Properties and Rental Housing Units are subject to routine periodic inspection by the City as provided by this Chapter to determine whether they comply with applicable provisions of this code. Specifically the maintenance or the failure to maintain any real property, structures, or uses or activities thereon in violation of any of the provisions of Titles III, IV, V, VII, IX and X of the City Municipal Code, or as specified in Health & Safety Code §§ 17920.3 et seq., or of the State Housing Law or § 104 of the Uniform Code for Building Conservation, except those Rental Housing Units inspected through the Self-Certification Program where a minimum of 10% of such units shall be subject to routine periodic inspection by the City.

(B) If there are multiple Rental Housing Units on a single Rental Housing Property, the inspection shall be made of all Common Areas and all Rental Housing Units.

(C) The Owner or Local contact representative, or their designee, shall be present at the Rental Housing Property at the time of the inspection. The time of the inspection shall be the time indicated in the notice issued pursuant to § 4-16.12 of this code, or the time that the inspection was properly re-scheduled in accordance with Section 4-16.13 of this code. Violation of this subsection may result in the imposition of a re-scheduling fee.

(D) The Frequency of such routine periodic inspections shall be set on a three year basis where each Rental Housing Property or Rental Housing Unit subject to the provisions of this Chapter shall be inspected at least once every three years unless otherwise set pursuant to sections § 4-16.09 Self-Certification or § 4-16.15 Non-Compliance.

**§ 4-16.07 Fees established.**

The following fees are established and imposed pursuant to the provisions of this Chapter:

(A) Initial Inspection Fee. A fee is established for the initial inspection required pursuant to Section 4-16.06 of this code. Such inspection fee shall be actual cost not to exceed 3 hours per unit. Hourly Cost is set by the City of Madera Master Fee Schedule as may be updated from time to time.

(B) Re-scheduling Fee. A fee is established for the administrative costs of re-scheduling an inspection that is cancelled in violation of Section 4-16.13 of this code. Such Re-scheduling Fee is set by the City of Madera Master Fee Schedule as may be updated from time to time.

(C) Re-inspection Fee. A fee is established for an additional inspection required by the City pursuant to Section 4-16.15 of this code. Such Re-inspection Fee is set by the City of Madera Master Fee Schedule as may be updated from time to time.

(D) Registration Delinquency Fee. A fee is established for the failure of any Owner or agent to properly register any Rental Housing Unit subject to the provisions of this

Code. The City shall mail notice to Owners with an application for registration. Owners shall have thirty days from receipt of said notice to submit registration information to the City. Failure to submit complete and accurate registration information within thirty days from receipt of notice from the City, shall result in the assessment of a Registration Delinquency Fee. Such Registration Delinquency Fee is set by the City of Madera Master Fee Schedule as may be updated from time to time.

**§ 4-16.08 Local contact representative.**

(A) All Owners of Rental Housing Properties shall designate a Local contact representative with full authority to act on behalf of the Owner for all purposes under this Chapter, including the acceptance of service of all notices from the City. The Owner of the Rental Housing Property may act as the Local contact representative.

(B) A Local contact representative must establish and maintain a Local telephone number and a residence or business address.

**§ 4-16.09 Self-Certification.**

(A) Owners of Rental Housing Properties that are in the Self-Certification Program, or their designees, shall certify each and every Rental Housing Unit on the property at least once every three years. Self-Certification shall be accomplished in the manner set forth below:

(1) Inspect each Rental Housing Unit for compliance with the requirements of the Self-Certification form provided by the City;

(2) Immediately make any repairs to the Rental Housing Unit that are necessary to achieve compliance with the requirements set forth in the Self-Certification form;

(3) Complete the Self-Certification form; and

(4) Provide a copy of the completed Self-Certification form to the City Administrator or his or her designee.

(B) If any Rental Housing Unit cannot be self-certified because necessary repairs cannot or will not be made, the Owner shall notify the City within 30 days of determining repairs cannot or will not be made.

(C) It shall be unlawful to falsify any material information required on the Self-Certification form.

(D) The City of Madera will verify program compliance by inspecting a random sample of 10% of Rental Housing Units. Such 10% random sample shall be selected by the City Administrator or his or her designee.

**§ 4-16.10 Qualifications.**

(A) A Rental Housing Property shall be placed in the Self-Certification Program if all of the following circumstances exist:

(1) After the last inspection conducted pursuant to this Chapter, the inspector determines that either no violations exist on the property or the violations

identified were abated within 30 days;

(2) The Owner and Local contact representative are in compliance with all applicable provisions of this Chapter; and

(3) The property Owner is not delinquent on any payment to the City of fees, penalties, taxes or any other monies related to the property.

(B) A Rental Housing Property may be removed from the Self-Certification Program or such random inspection sample as described in Section 4-16.09(D) may be increased, for every occurrence set forth in subsections (1) through (3) below, by 10%, up to 30% after which such property shall be removed from the Self-Certification Program:

(1) A Notice of Violation relating to the Rental Housing Property is issued pursuant to the provisions of this code and the violations identified are not abated within 30 days;

(2) The Rental Housing Property is in violation of this Code or any other applicable law, on three separate and consecutive occasions even though the violations are abated within 30 days; or

(3) Any of the circumstances set forth in § 4-16.10(A) of this section cease to exist.

#### **§ 4-16.11 Implementation.**

(A) Initial implementation of Residential Rental Housing Unit inspections may be limited to those Rental Housing Units which have been issued a certificate of occupancy or have passed final inspection by the City of Madera in the year 1970 or prior.

(B) Continued implementation may be set forth as follows subject to the recommendation of the City Administrator or his or her designee:

(1) Three years after the adoption of this ordinance all Residential Rental Housing Units that have been issued a certificate of occupancy or have passed final inspection by the City of Madera in the year 1980 or prior may become eligible for routine inspection.

(2) Six years after the adoption of this ordinance all Residential Rental Housing Units that have been issued a certificate of occupancy or have passed final inspection by the City of Madera in the year 1990 or prior may become eligible for routine inspection.

(3) Nine Years after the adoption of this ordinance all Residential Rental Housing units that have been issued a certificate of occupancy or have passed final inspection by the City of Madera in the year 2000 or prior may become eligible for routine inspection.

(4) Twelve years after the adoption of this ordinance all Residential Rental Housing Units in the City of Madera may become eligible for routine inspection.

(C) Nothing in this section shall be construed to limit the ability of the City to inspect Rental Housing Units where a complaint has been submitted or where a history of non-compliance has been established or a reasonable suspicion of a violation addressed in this Chapter exists.

#### **§ 4-16.12 Inspection Notice.**

The City shall serve written notice of the date and time of any inspection to be

conducted pursuant to this Chapter, by mailing such notice at least 30 calendar days prior to the date of the inspection. Notice shall be mailed to the Owner and the Local contact representative at their last known address. In the case of multiple Owners of the same property, notice to any one of the property Owners is sufficient notice.

**§ 4-16.13 Re-scheduling an inspection.**

An inspection may be rescheduled once by the Owner or Local contact representative by giving notice to the Neighborhood Revitalization Department at least five calendar days prior to the scheduled inspection date. An inspection may only be rescheduled to a date within 30 calendar days of the previously scheduled inspection date. Violation of this section may result in the imposition of a re-scheduling fee.

**§ 4-16.14 Entry.**

(A) It shall be the responsibility of the Owner and the Local contact representative to obtain the consent of the occupants to inspect the subject Rental Housing Units or otherwise obtain legal access to the units pursuant to the terms of any applicable lease.

(B) If consent to enter onto any Rental Housing Property or any Rental Housing Unit is refused or otherwise cannot be obtained, or if requested by the Owner or occupant of the Rental Housing Unit, the City Administrator or his/her designee is authorized to seek an inspection warrant from a court of competent jurisdiction.

**§ 4-16.15 Non-compliance.**

(A) If, during an inspection conducted pursuant to this Chapter, an inspector discovers that the property is in violation of this code or any other applicable law, the City may require additional inspections of the property in accordance with this Chapter, to ensure continued compliance.

(B) If a Rental Housing Property is repeatedly in violation of this code or any other applicable law, even though the violations are abated within 30 days the frequency of the regular periodic inspections may be increased to the satisfaction of the City Administrator or his or her designee to ensure continued compliance.

(C) In addition to requiring additional inspections pursuant to § 4-16.15(A), above, the City may commence enforcement action in accordance with any provisions of this code including, but not limited to, MMC Title I Chapter 9.

(D) An extension to complete corrections listed on a Notice of Violation pursuant to the provision of this Chapter, where administrative penalties are postponed, may be granted by the City Administrator or his or her designee if the Owner or agent establishes by substantial evidence to the reasonable satisfaction of the City Administrator or his or her designee that the Rental Housing Property Owner is progressing diligently to complete the abatement of such listed violations. Extensions shall not apply to Re-inspection Fees.

**§4-16.16 Inspection Results.**

Upon completion of an inspection conducted pursuant to this Chapter by the City, the inspector shall provide the Owner or Local contact person with a copy of the written results of the inspection.

**§ 4-16.17 Abatement**

Upon receipt of a Notice of Violation, it shall be the duty of every Owner of any Rental Housing Property or Rental Housing Unit to abate therefrom, all listed violations of this code. The removal of such violations shall be completed within the time period stipulated in the Notice of Violation, and if such Owner fails to address the violation in a timely manner as ordered in the notice, the City Administrator, or his or her designee, shall thereafter have the authority to seek legal right to abate the violations, including but not limited to securing an abatement warrant, at the sole expense and responsibility of the property Owner.

**§ 4-16.18 Non-exclusivity.**

None of the inspection provisions contained in this Chapter shall prohibit, condition or otherwise limit any inspection conducted pursuant to any other provision of this code or other applicable law.

**§ 4-16.19 Recovery of Costs of Enforcement**

At any time during the enforcement of the provisions of this Chapter or when proceedings under this Chapter result in the correction of a violation of this code or in a final judgement that a violation exists subsequent to the date specified in a Notice of Violation issued pursuant to the provision of the City of Madera Municipal Code, costs of such proceedings incurred by the City may be assessed against the subject property as a lien or special assessment, pursuant to MMC Title I Chapter 9. Such costs may include, but not be limited to, those incurred in inspecting property, publication, mailing and posting notices, conducting hearings, processing appeals and pursuing any judicial action and attorneys' fees.

**§ 4-16.20 Notice to Vacate.**

(A) If the Chief Building Official has determined that the dwelling or portion thereof is in such a condition as to make it immediately dangerous to the life, health, property or safety of its occupants, the public or adjacent property, the City Administrator or his or her designee shall order that the dwelling, or portion thereof, shall be vacated within a time certain from the date of the order as determined reasonable by the City Administrator or his or her designee under all of the circumstances, including the safety of the occupants and the public, as well as the purposes and intent of this Chapter. The City Administrator or his or her designee shall give notice of this order as provided in MMC § 1-9.07 concerning method of service and shall post such order as herein described

(B) Whenever a notice is required to be given under this section, unless different provisions herein are otherwise specifically made in the code, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the US mail in a sealed envelope, postage prepaid, addressed to such person to be notified at the person's last known business or residence address as the same appears in the public records of the city or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

**§ 4-16.21 Displacement**

If during the course of any action pursuant to the provisions of this Chapter a qualified

low income housing candidate is displaced, the City may make a request to the Housing Authority of the City of Madera to expedite the placement of such individuals in subsidized housing maintained by the Housing Authority. Such a request shall not be made if it is demonstrated that the tenant being displaced has caused or substantially contributed to the condition giving rise to such necessity to vacate, or if any guest or invitee of the tenant has caused or substantially contributed to the condition giving rise to such necessity to vacate. Nothing in this section shall be deemed a guarantee of a right to placement in a Housing Authority unit.

#### **§ 4-16.22 Notice to Occupants.**

(A) Notwithstanding any provision herein to the contrary. Occupants of a dwelling which is the subject of a violation under this Chapter shall be provided notice of any violation described herein, including any decision by the City Administrator or his or her designee of the City to vacate, repair or demolish, and the issuance of a building permit or demolition permit following issuance of such notice and order by the City Administrator or his or her designee.

(B) The notice described hereinabove may be provided either by first class mail to each affected dwelling unit, or by posting a copy of the document in a prominent place on the affected dwelling at the discretion of the City Administrator or his or her designee.

#### **§ 4-16.23 Renters' Bill of Rights**

Tenants have basic legal rights and responsibilities that are always present no matter what their rental agreement or lease states. A listing of such rights and responsibilities shall be made available to tenants by the Owner or the Owner's agent of a rental housing unit by providing a copy of the tenant's rights and responsibilities upon executing a rental agreement or lease with such tenant or once each calendar year thereafter, upon request by the tenant. These rights and responsibilities shall include but may not be limited to those set forth in Civil Code 1941.1 regarding Owner obligations and tenantable dwellings, 1941.2 regarding tenant obligations, and 1942.5 regarding retaliation.

#### **§ 4-16.24 Relocation Benefits.**

In addition to those remedies in this Chapter, and any other remedies provided by law, the City may seek a court order requiring the Owner to pay reasonable relocation benefits to each lawful tenant as set forth in Sections 17975 et seq. of the Health and Safety Code.

#### **§ 4-16.25 Outreach**

The City shall implement an outreach program where Owners and tenants may be made aware of their rights and responsibilities pursuant to the provisions of this ordinance. Features of such a program may include but not by way of limitation:

- (A) Tenants' rights and responsibilities presentations.
- (B) Owners' rights and responsibilities presentations.
- (C) Housing and credit counseling workshops and presentations.

#### **§4-16.26 Penalties.**

Any person who violates the provisions of this Chapter shall be guilty of a misdemeanor. In addition, the City may also impose administrative penalties pursuant to

MMC § 1-9 and seek injunctive relief and civil penalties in the superior court for violations of this Chapter. The remedies provided for in this Chapter shall be cumulative and not exclusive of any other remedies available under any other federal, state or local laws.]

SECTION 2. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or void for any other reason.

SECTION 3. This Ordinance shall be effective and of full force and effect at 12:01 a.m. on the thirty-first day after its passage.

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The foregoing Ordinance No. 942 C.S. was introduced and given its first reading at a regular meeting of the City Council of the City of Madera held on the 7<sup>th</sup> day of June, 2017 and adopted after a second reading at a regular meeting of the City Council held on the 21<sup>st</sup> day of June, 2017 by the following vote:


AYES: Mayor Medellin, Council Members Foley Gallegos, Rodriguez, Holley, Robinson, Oliver, Rigby.  
NOES: None.  
ABSTENTIONS: None.  
ABSENT: None.

APPROVED:



ANDREW J. MEDELLIN, Mayor

ATTEST:



SONIA ALVAREZ, City Clerk

APPROVED AS TO LEGAL FORM:



BRENT RICHARDSON, City Attorney

