

REPORT TO CITY COUNCIL

Approved by:

Department Director

Arnaldo Rodriguez, City Manager

Council Meeting of: May 1, 2019

Agenda Number: B-5

SUBJECT:

- 1) Consideration of a Resolution Approving the Final Map for the Riverwalk Subdivision (Tract No. 2016-03), Approving the Subdivision Agreement, Authorizing Staff to Record the Final Map and Subdivision Agreement, Accepting dedication of Lands for Public Use and Authorizing the Mayor to Execute the Agreement on Behalf of the City
- 2) Consideration of a Resolution Approving Annexation of the Riverwalk Subdivision (Tract No. 2016-03) into Zone of Benefit 51; Confirming the Diagram and Assessments for City Wide Landscape and Lighting Assessment District Zone of Benefit 51 for Fiscal Year (FY) 2019/2020; Authorizing the Mayor to Execute the Covenant on Behalf of the City and Authorizing the City Clerk to File the Diagram and Assessment with the Madera County Auditor

RECOMMENDATION:

Staff recommends that the City Council (Council) adopt the following resolutions:

Resolution No. 19-_____

- a. Approving the Final Map for the Riverwalk Subdivision.
- b. Approving Agreement for the Construction of Improvements for the Riverwalk Subdivision (Final Map. No. 2016-03).
- c. Authorizing staff to record the Final Map and Subdivision Agreement for the Construction of Improvements for the Riverwalk Subdivision (Final Map. No. 2016-03).
- d. Accepting the Dedication of Land for Public Use.

Resolution No. 19-_____

- a. Approving Annexation of Riverwalk Subdivision (Tract No. 2016-03) into Landscape and Lighting Assessment District Zone of Benefit 51 of City-Wide Landscape

Maintenance District; confirming the Diagram and Assessment for FY 2019/2020; Authorizing the Mayor to Execute the Covenant on Behalf of the City, and Authorizing the City Clerk to File the Diagram and Assessment with the Madera County Auditor.

SUMMARY:

The Planning Commission on January 10, 2017 approved Tentative Subdivision Map No. TSM 2016-03 for the Riverwalk Subdivision (“Project”). With the exception of utility undergrounding, the subdivision improvements were constructed via a capital improvement project in 2016. The Subdivider, the Madera Successor Agency, is ready to proceed with utility undergrounding and recordation of the Final Map.

DISCUSSION:

The Final Map for Riverwalk Subdivision has been checked and approved by the City Engineer. The Final Map substantially complies with the approved tentative map. All taxes will be paid prior to recording of the Final Map. While the Successor Agency is a public entity affiliated with the City that will not be posting bonds, security, or insurance, these items have been required for any successor in interest who subsequently acquires the property – assuming the utility undergrounding has not been completed at that time. The lots created through this subdivision map will be annexed into Landscape Maintenance District (LMD) Zone of Benefit 51. The lots created through this subdivision are included City’s Community Facilities District (CFD) to collect assessments toward increased demand from this subdivision on fire, police, parks and storm water drainage. Pursuant to CEQA Guidelines Section 15268(b)(3), approval of final subdivision maps is a ministerial action and is exempt from the requirements of CEQA.

FINANCIAL IMPACT:

The Subdivision is included in the CFD to offset any impacts to the City’s General Fund. The individual parcels will be responsible for participating in the cost to maintain the landscaping in Zone 51. The Subdivider has also paid the required fees for plan checking and inspection of the installation of required improvements for the subdivision. There is no financial impact to the General Fund.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The development of subdivisions directly supports Strategy 131, which encourages the creation of “Well-Planned neighborhoods throughout Madera that promote connectivity and inclusiveness.” In addition, the inclusion of the parcels into LMD Zone of Benefit 51 consistent with:

Strategy 126 - Clean, attractive streets: Expand or develop programs to create clean, safe and aesthetically pleasing streets.

Action 134.1 - Consider establishment of design/landscape standards for neighborhoods and business construction - Current landscape design standards have been enforced which aid in the establishment of Well-Planned Neighborhoods and Housing.

ALTERNATIVES:

If Council does not approve the Final Map, the execution of the Subdivision Agreement and the annexation of the parcels into the existing LMD zones, this would result in the inability to record the map. Disapproval will require the Council make certain findings that specific conditions that have not been met.

ATTACHMENTS:

1. Resolution Approving Final Map and Approving Subdivision Agreement (Including attached Subdivision Agreement)
2. Resolution of Confirmation of the Diagram and Assessments for Zone of Benefit 51 with Legal Description and Assessment Diagram Zone 51
3. Covenant for LMD Zone 51 with Legal Description
4. LMD Zone Location Map

ATTACHMENT 1

RESOLUTION NO. 19-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING THE FINAL MAP FOR THE RIVERWALK SUBDIVISION (TRACT NO. 2016-03), APPROVING SUBDIVISION AGREEMENT, AUTHORIZING STAFF TO RECORD FINAL MAP AND SUBDIVISION AGREEMENT, ACCEPTING DEDICATION OF LANDS FOR PUBLIC USE AND AUTHORIZING THE MAYOR TO EXECUTE THE SUBDIVISION AGREEMENT ON BEHALF OF THE CITY

WHEREAS, the Planning Commission on January 10, 2017 adopted a negative declaration consistent with Section 15070(a) of the California Environmental Quality Act for the Riverwalk Subdivision as part of Tentative Subdivision TSM 2016-03.

WHEREAS, that certain Final Map for the Riverwalk Subdivision, prepared by Blair, Church & Flynn Consulting Engineers, Successor Housing Agency to the Former Madera Redevelopment Agency, a public body, having heretofore been certified by the City Engineer that all provisions of the law and of Chapter 2 of Title X of the Madera Municipal Code have been complied with and that said subdivision as shown is substantially the same as it appears on the tentative map thereof heretofore approved by the Planning Commission of the City of Madera on January 10, 2017.

WHEREAS, prior to the delivery of said map and prior to its recordation, the Owner and Subdivider of said subdivision shall enter into and execute an agreement between the City and said Owner and Subdivider for said subdivision which is on file in the office of the City Clerk entitled, "**AGREEMENT FOR THE CONSTRUCTION OF IMPROVEMENTS FOR RIVERWALK SUBDIVISION**," wherein the Subdivider, in consideration of the approval of said map by the City and the acceptance by the City of the dedication of lands for public use therein contained, shall agree to construct and complete within the time specified in said Subdivision Agreement all

street and other improvements required of Subdivider under the provisions of Chapter 2 of Title X of the Madera Municipal Code relating to regulations and standards for the subdivision of lands in the City and the preparation of maps thereof, and such street or other improvements designated or mentioned in said Agreement and/or set forth in the plans and specifications for the improvements for the **Riverwalk Subdivision** is on file in the office of the City Engineer; and

WHEREAS, Subdivider is a public entity affiliated with the City that will not be posting bonds, security, or insurance. However, Subdivider has identified funds for these improvements, and these items have been required for any successor in interest who subsequently acquires the property – assuming the utility undergrounding has not been completed at that time – as required the above-mentioned Agreement entitled “**AGREEMENT FOR THE CONSTRUCTION OF IMPROVEMENTS FOR RIVERWALK SUBDIVISION,**” as will be filed in the office of the City Clerk.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. The Final Map for the **Riverwalk Subdivision (Tract No. 2016-03)** is approved.
3. The agreement entitled “Construction of Improvements for the Riverwalk Subdivision (Final Map. No. 2016-03)” (“Subdivision Agreement”), for the construction of improvements for the **Riverwalk Subdivision**, is approved and attached as Exhibit “A”. A copy of the Subdivision Agreement shall be kept on file in the office of the City Clerk.

4. The Mayor is authorized to execute the Subdivision Agreement on behalf of the City.
5. The Staff is authorized to record the Final Map and Subdivision Agreement for the construction of improvements for the **Riverwalk Subdivision**.
6. The dedication of lands for public use is accepted.
7. This resolution is effective immediately upon adoption.

* * * * *

Exhibit A

**Agreement for the Construction of Improvements for the
Riverwalk Subdivision (Final Map. No. 2016-03)**

RECORDING REQUESTED BY:

City of Madera
AFTER RECORDING RETURN TO:
City Clerk
City of Madera
205 W. 4th Street
Madera, CA 93637

Fee Waived Per Section 27383 & 27388.1(a)(2)(D) of the Government Code

**AGREEMENT FOR THE CONSTRUCTION OF IMPROVEMENTS FOR
RIVERWALK SUBDIVISION
(FINAL MAP. NO. 2016-03)**

THIS AGREEMENT made and entered into this ___ day of ____, 2019, by and between the **City OF MADERA**, a municipal corporation of the State of California, hereinafter called "City"; and **Successor Housing Agency to the Former Madera Redevelopment Agency** hereinafter called "Subdivider" or "Owner."

RECITALS

- A. Owner has filed with City a certain subdivision map of a proposed division of land (the "Subject Property") owned by Owner, located within the corporate limits of the City, and more particularly described as set forth in Exhibit "A." A copy of said Tentative Tract Map No. 2016-03 ("Tentative Map") is on file with the City Clerk.
- B. The City has conducted the appropriate environmental review of the proposed subdivision, the Planning Commission has determined the proposed subdivision is consistent with the City's general plan in that the land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan, and the Planning Commission has recommended approval of the proposed Tentative Map as conditioned.
- C. City requires as a condition precedent to the acceptance and approval of the Final Tract Map the dedications or deeds of such streets, highways, and public places for all areas delineated on said map for street and other public purposes as required under the Madera Municipal Code, this Agreement, and the Tentative Map.
- D. Owner is required to construct certain improvements. The infrastructure improvements for Riverwalk Subdivision were completed via a capital improvement project managed by the Subdivider that included constructing certain street, utility, and public improvements within the boundaries of said Final Tract Map. All such improvements have been completed except the undergrounding of public utilities as shown on the Construction Plans For Riverwalk Drive Improvement Project approved by the City Engineer and on file with the City Engineer of the City of Madera.

- E. Owner is a public entity, and currently desires to complete the improvements and subdivide the Subject Property through the Subdivision Map Act process.
- F. City Council approval of said Final Tract Map to divide the property and acceptance of the dedications therein offered are subject to and on the condition precedent that Owner first enter into and execute this Agreement with the City, and provide the City with such bonds, improvement securities, monies and all other things as required herein and/or as required by the City.

AGREEMENT

In consideration of the approval of the above mentioned Final Tract Map for filing and recording as provided and required by law, it is mutually agreed and understood by and between the Owner and City, and Owner and City do hereby mutually agree as follows:

ARTICLE I. GENERAL LEGAL PROVISIONS

A. AGREEMENT

This Agreement is entered into pursuant to California Government Code Section 66462, and Section 10-2.701 *et seq.* of Chapter 2 of Title X of the Madera Municipal Code. The provisions of this Agreement and the improvements to be constructed pursuant to the requirements of the Subdivision Map Act and this Agreement are necessary and proper to safeguard and serve the public health, safety and welfare.

B. DEFINITIONS

Wherever used in the Agreement, the following words and phrases shall have the meaning herein given, unless the context requires a different meaning:

- 1. "Engineer" shall mean the City Engineer of the City Of Madera, or duly authorized representative.
- 2. "Inspector" shall mean the City Engineer of the City Of Madera, or his duly authorized representative.
- 3. "Standard Specifications" shall mean the City Of Madera Standard Specifications, including attached details and amendments thereto.
- 4. "Division" shall mean and include the real property shown and described on the subdivision map as being divided into parcels, including street areas of adjacent existing public streets to the center lines thereof.
- 5. "Improvements" shall mean all work and improvements, including those depicted or required on the plans for the Final Map, which may include plans relating to sewer, water, streets, storm drainage, street lighting, concrete, paving, fencing, landscaping, irrigation, grading, and traffic signals.

C. DEVELOPMENT FEES

- 1. Impact Fees. Subdivider did previously pay to City the cost for all engineering, inspection and other services furnished by City in connection with this subdivision in accordance with the fee schedule established by City Council Resolution No. 18-126, dated July 5, 2018, or as amended which was in place at the time the Final Map process was initiated by the Subdivider.
- 2. In addition, Owner is obligated to pay plan check, improvement inspection,

grading permit, building permit, encroachment permit, and similar miscellaneous fees as required under the Madera Municipal Code and other applicable law if not yet paid.

D. INDEMNIFICATION

To the furthest extent allowed by law, owner shall indemnify, hold harmless, and defend the City, the City Engineer, its officers, and employees from any and all claims, demands, costs, loss, damage, or liability whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time and property damage incurred by City, Owner, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation, and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorney's fees if awarded in connection with City's defense of its actions in any proceeding) arising or alleged to have arisen directly or indirectly of performance or in any way connected with (the making of this Agreement; (ii) the performance of this Agreement; (iii) the performance or installation of the work or Improvements by Owner and Owner's employees, officers, agents, contractors or subcontractors; (iv) the design, installation, operation, removal or maintenance of the work and Improvements; or (v) City's approval of this save and except the sole active negligence of City.

The Parties intend that this indemnity provision shall be broadly construed to the fullest extent permitted by law.

Pursuant to Government Code Section 66474.9, the Owner shall defend, indemnify, and hold harmless the City, its agents, officers and employees from any claim, action or proceeding against the City, its agents, officers, or employees to attack, set aside, void, or annul, an approval of the City, its planning commission, its City Council or other agencies or agents concerning subdivision Tract No. 2016-03 or this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and shall cooperate fully in the defense.

E. INSURANCE

Prior to the commencement of any work pursuant to this contract, Owner's contractors shall furnish to City satisfactory evidence of an insurance policy written upon a form and by a company which meets with the approval of City insuring City and the City Engineer, their officers, agents and employees against loss or liability which may arise during the work or which may result from any of the work herein required to be done, including all costs of defending any claim arising as a result thereof. The minimum limits of such policy shall be in the amount of One Million Dollars (\$1,000,000.00) for the death of or injury to any person in any one accident, Two Million Dollars (\$2,000,000.00) for the death of or injury to more than one person in any one accident and Three Hundred Thousand Dollars (\$300,000.00) for property damage in any one accident. Any policy required by the Encroachment Permit shall include coverage for underground explosion and collapse. Said policy shall be in favor of Owner or its contractors and City and the City Engineer, their officers, agents and employees and shall be maintained in full force and effect during the life of this Agreement. Said policy shall state by its terms and by an

endorsement that said policy shall not be canceled until City shall have had at least thirty (30) days' notice in writing of such cancellation.

F. NOTICE OF COMPLETION

The offers of dedication made on the Subdivision Map shall remain open, but will not be accepted by the City until the City Council accepts the Improvements and authorizes the recording of a Notice of Completion. The City may accept such offers in its sole discretion at any later date without further notice to Owner. Until such time as City formally accepts the Improvements and any lands, rights of way or easements, Owner shall be responsible to maintain such lands, rights of way, easements and improvements in a safe condition and good repair.

Owner agrees that the use of any or all streets and improvements specified in this Agreement shall be at all times, prior to the final acceptance of the subdivision by City, at the sole and exclusive risk of Owner, and the issuance of any occupancy permits by City for dwellings located within the subdivision shall not be construed in any manner to be an acceptance or approval of any or all of the streets and improvements in the subdivision, or that stage of development of the streets and improvements represented by their condition at the time of issuance of any occupancy permits, or any stage of their development reached during the period commencing with the issuance of any occupancy permit and terminating upon the final acceptance of the tract.

G. BONDS AND SECURITY

Prior to recording the final map, or unless otherwise indicated, Owner shall furnish to the City performance guarantees as provided herein. Bonds or other security instruments shall be maintained in full force and effect during the term of this Agreement and may be released, in whole or in part, only upon the written approval of the City Engineer. Owner shall provide the following as security:

1. Performance Security. Improvement security in the amount of one hundred percent (100%) of the total estimated cost of all required work yet to be completed as indicated in the Agreement or requirements for the purpose of securing the performance of said work. Said amount shall be determined by the City Engineer at the time such improvement security is due when a successor in interest acquires fee simple interest in any portion of the property. As a part of the obligation guaranteed herein by the improvement security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorney's and administration fees, incurred by the local agency in successfully enforcing the obligation secured. "Improvement Security" as used herein shall be defined as "a letter of credit, from a bank insured by FDIC, or a performance bond." Any bonds submitted by security pursuant to this section shall be executed by a security company authorized to transact a surety business in the State of California. All required securities must be in a form approved by City's attorney.
2. Payment Security. Improvement security in the amount of fifty percent (50%) of the estimated cost of all required work to secure payment to the contractor, his or her subcontractors, and persons renting equipment or

furnishing labor or materials for such improvements. Said amount shall be determined by the City Engineer at the time such payment security is due when a successor in interest acquires fee simple interest in any portion of the property. As a part of the obligation guaranteed herein by the improvement security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees, including reasonable attorney's and administration fees, incurred by the local agency in successfully enforcing the obligation secured. "Improvement Security" as used herein shall be defined as "a letter of credit, from a bank insured by FDIC, or a performance bond."

3. Warranty Security. Owner shall remedy any defective work, labor or materials related to the Improvements, and shall pay City for any damage to the Improvements resulting therefrom, which occur within a period of one (1) year from the date of acceptance of the Improvements by the City. To insure Owner complies with these obligations, on acceptance of the required work by the City Engineer, warranty security shall be furnished to City in the amount to be determined by the City Engineer at the time such warranty security is due when a successor in interest acquires fee simple interest in any portion of the property. The warranty security shall serve as a guarantee and warranty of the work for a period of one (1) year following acceptance against any defective work, labor or materials. Twenty percent (20%) of this security shall be cash deposited prior to final inspection and approval of the offsite Improvements by the City Engineer and shall be in addition to the security provided by bond or other improvement security if a set aside letter is used. The warranty security shall be released, less any amount required to be used for fulfillment of the warranty, one (1) year after final acceptance of the subdivision Improvements.

H. MATERIALS AND LABOR

Owner and its contractors and subcontractors shall pay for any materials, provisions and other supplies or items used in, upon, for or about the performance of the work contracted to be done, and for any work or labor thereon of any kind and for amounts due under the Unemployment Insurance Act of the State of California, with respect to such work or labor, and shall file with the City pursuant to section 3800 of the Labor Code a Certificate of Worker's Compensation and shall maintain a valid policy of Worker's Compensation Insurance for the duration of the period of construction or provide under penalty of perjury a satisfactory demonstration of exemption from coverage.

I. LIGHTING AND LANDSCAPING DISTRICT

The Owner agrees to complete annexation to or establishment of a Lighting and Landscaping District pursuant to California Streets and Highway Code section 22500, et. seq., and to maintain lighting and publicly landscaped areas until the City formally accepts the Improvements which are the subject of this Agreement. Prior to release and recordation of the Final Map, Owner shall, at Owner's sole cost and expense, submit to City all engineering reports, assessment data, and updated maps necessary to cause the

Subject Property, to be annexed into Zone of Benefit 51 of the City-Wide Landscape and Lighting Assessment District. The annexation of the property into Zone of Benefit 51 shall be considered for recording concurrently with the City Council's consideration and approval of the Final Map. If annexation into Zone of Benefit 51 is not possible for any reason, the Owner shall cooperate with the City in forming a new Zone of Benefit or identification of another existing zone into which this subdivision can be annexed.

J. EASEMENTS

Owner shall grant City an easement for maintenance, repair or reconstruction of any water main or sewer main or other City-operated improvement which is constructed outside a dedicated public street.

K. FAILURE OF PERFORMANCE; ATTORNEY'S FEES

In addition to any other remedies provided in this Agreement or by law, in the event Owner fails to perform one or more of the covenants or conditions of this Agreement, City shall have recourse to the security given to guarantee the performance of such acts. City may do, or cause to be done, those acts required of Owner, and shall have recourse against so much of the security as is necessary to discharge the responsibility of Owner. In the event City seeks recourse against a security, City shall also have recourse against Owner for any and all amounts necessary to complete the obligations of Owner in the event the security is insufficient to pay such amounts. All administrative costs, including reasonable attorney's fees pursuant to Gov. Code, § 66499.4 incurred by the City, in addition to the costs of the Improvements, shall be a proper charge against the security and Owner.

In the event it becomes necessary for either party to bring an action with respect to enforcement of the provisions of this Agreement, or the security therefor, the prevailing party in such action shall be awarded reasonable costs and attorney's fees as may be determined by the Court.

L. TIME OF THE ESSENCE

Time is of the essence of this Agreement, and the same shall bind and inure to the benefit of the parties hereto, their successors and assigns.

M. SUCCESSORS AND ASSIGNS; COVENANT RUNNING WITH LAND

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the respective parties. It shall be recorded in the Official Records of the County of Fresno concurrently with final map of the Subdivision, and shall constitute a covenant running with the land and an equitable servitude upon the real property in the Subdivision. No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by Owner without the written consent of City.

N. INTEGRATION; ATTACHED EXHIBITS

This Agreement is an integrated agreement, and includes the documents referenced herein and its Exhibits, which are included herewith and made a part of this Agreement. The Final Map has been recorded separately, and a copy is on file with the City Clerk. This Agreement supersedes all prior negotiations, representation, or agreements, whether written or oral.

O. CONDITIONS OF APPROVAL

Owner shall comply with all conditions of approval set forth in Resolution approving the Tract Map as adopted on January 12, 2017 by the Planning Commission, including the requirements and conditions of the City Engineer, and all specifications or requirements set forth on the Final Map, all of which are on file with the City Clerk.

P. COMPLIANCE WITH LAW

In performing obligations set forth in this Agreement, Owner shall comply with all applicable laws, regulations, and rules of all local, state and federal governmental agencies having jurisdiction including, without limitation, applicable federal and state labor standards and environmental laws and regulations. Owner shall comply with the codes or ordinances of the City including the Madera Municipal Code and Building Codes.

Q. PREVAILING WAGES

Owner shall: (i) be required to pay, and shall cause its contractor and subcontractors to pay, prevailing wages for the construction of those specific Improvements for which Owner receives credits or reimbursements, if any, and those Improvements, if any, that are "public works" under Chapter 1, Part 7, Division 2 of the California Labor Code, including Section 1720(a); and (ii) comply with any applicable provisions of California Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations. Owner shall or shall cause its contractor and subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as may be required by law. During the construction of the Improvements, if any, Owner shall, or shall cause its contractor to, post at the Subject Property the applicable prevailing rates of per diem wages. As required by Section D of this Agreement, Owner shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Owner, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations in connection with construction of any Improvements.

R. ENFORCEMENT OF OBLIGATIONS

City may enforce this Agreement in any manner available at law or in equity, including, but not limited to, reversion to acreage.

S. LIMITATIONS OF LEGAL ACTS

Except as provided by the following subsection entitled "Attorney's Fees and Legal Expenses," in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed Owner's sole legal remedy for breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

T. ATTORNEY'S FEES AND LEGAL EXPENSES

If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable

attorney's fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

U. OBLIGATION RUNNING WITH LAND

This Agreement shall burden the Subject Property described and constitute a covenant running with the land in favor of and for the benefit of City which shall be binding upon the successors, transferees, and heirs of Owner. Owner consents to the recordation of this Agreement with the Fresno County Recorder.

V. WAIVER

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

W. INCORPORATION OF ATTACHMENTS

All recitals and attachments to this Agreement, including all Exhibits referenced herein, and all subparts thereto, are incorporated herein by this reference.

X. SUBORDINATION

Owner hereby warrants that any and all parties having record title interest in the Final Map which may ripen into a fee have subordinated to this Agreement and all such instruments of subordination, if any, are attached hereto and made a part of this Agreement.

Y. NO ASSIGNMENT

No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by Owner without the written consent of City.

Z. CAPTIONS

Section, paragraph and other captions or headings contained in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend or otherwise describe the scope or intent of the Agreement or any provision hereof and shall not affect in any way the meaning or interpretation of this Agreement.

AA. AMBIGUITIES OR UNCERTAINTIES

Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this Agreement, on the express understanding and agreement the Parties participated equally in the negotiation and preparation of the Agreement, or have had equal opportunity to do so. Accordingly, the Parties hereby waive the benefit of California Civil Code §1654 and any successor or amended statute, providing that in cases of

uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

BB. SEVERABLE PROVISIONS

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the validity or enforceability of the other provisions, which shall remain in full force and effect.

CC. RELEASE OF CONDITIONS

The conditions and obligations of this Agreement shall remain in full force and effect until such time as City Engineer issues a written release finding the conditions and obligations of this Agreement have been fully satisfied and are no longer required for public health and safety reasons and thereafter records such release with the Madera County Recorder.

DD. VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Madera County, California.

EE. ACKNOWLEDGEMENT OF CONTENT

Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Owner.

ARTICLE II. CONSTRUCTION REQUIREMENTS

A. STANDARD SPECIFICATIONS

All of the work and improvements and materials shall be performed, installed and provided in strict accordance with the City of Madera Standard Specifications incorporated herein by this reference, as though set forth in full. All of said work and improvements shall also comply with the requirements of the Madera Municipal Code. In case there are not any Standard specifications of the City of any said work, it is agreed that the same shall be done and performed in accordance with the standards and specifications of the State of California, Department of Transportation. All of said work and improvements and materials shall be done, performed and installed under the supervision of the City Engineer, under whose directions the work shall be inspected as it progresses.

Any work required under this Agreement shall also be performed, installed and provided in accordance with the standards of the State Water Resources Control Board, State Regional Water Quality Control Board, San Joaquin Unified Air Pollution Control District and those of other agencies identified in the Tentative Map Conditions of Approval insofar as they apply.

Until final acceptance of the Improvements, Owner shall give prominent and adequate warning to the public of each and every dangerous condition that may exist in the Subdivision, and shall take all reasonable actions to protect the public from any such dangerous condition.

B. SCOPE OF IMPROVEMENTS

The work and Improvements, including those depicted or required on the plans for the Final Map, which may include plans relating to sewer, water, streets, storm drainage, street lighting, landscape and irrigation, grading, traffic signals, etc., as well as those required by Conditions of Approval (herein collectively referred to as "Improvements") are incorporated by reference and made a part of this Agreement.

C. APPROVED PLANS

Notwithstanding the fact that Owner's plans and specifications have been approved by the City, and that completion of the work and other acts are subject to approval of the City, it is understood and agreed that any approval by the City hereof shall in no way relieve Owner of satisfactorily performing said work or its obligations hereunder.

Owner agrees to perform and construct all work and improvements shown on the approved plans on file in the office of the City Engineer. Owner agrees it shall comply with Madera Municipal Code section 10-2.707(C), which give the City the right to modify plans and specifications.

D. SCHEDULE

Owner shall perform the work and improvements hereinafter specified to the satisfaction of the City Engineer. Owner understands and agrees that the following schedule of work is intended to provide a guideline as to diligent prosecution of the work under this Agreement.

The Owner agrees to complete all remaining improvements within 370 days.

If the construction of the Improvements shall be delayed without the fault of Owner, the time for completion thereof may be extended by the City in writing signed by the City Engineer for such period of time as City may deem reasonable. However, City reserves the right to not issue Certificates of Occupancies for any structures constructed within this tract until improvements are constructed to the satisfaction of the City Engineer. Without limitation of the foregoing sentence, it is agreed that City shall have right to determine whether to issue or withhold Certificates of Occupancy if there is then existing a breach or failure to properly perform the obligations of this agreement, or if issuance would not serve the public health, safety or welfare.

Concrete curbs and gutters, the sanitary sewer system and house connections, storm drainage pipeline and structures, together with water mains, gas mains and their respective service connection and all other underground services or facilities, shall be completed before starting the street surfacing.

E. COMPACTION AND MATERIALS TESTING

Compaction and soil tests shall be paid for by Owner and Owner shall contract with the soils lab directly. Street and utility trench tests shall be taken in varying locations, depths, and frequencies as required and directed by the City Engineer. Compaction shall meet all City requirements.

F. CODES AND PERMITS

Owner shall comply with Street, Plumbing, Building, Electrical and Zoning Codes and any other Codes of the City and Owner shall secure an Encroachment Permit from City and the necessary insurance policies required under said permit before working on any City right-of-way or property.

Owner shall install all street improvements in accordance with Section 16.40 of the Municipal Code of the City of Madera, the City of Madera Standard Specifications, applicable sections of the State Standard Specifications, and the construction plans.

G. COORDINATION OF CONTRACTORS

It shall be the responsibility of Owner to coordinate all work done by his contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of City be placed in the position of making decisions that are the responsibility of Owner. It shall further be the responsibility of Owner to give the Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of Owner to notify the City Engineer may cause delay for which Owner shall be solely responsible.

H. INSPECTION

Whenever Owner varies the period during which work is carried on each day, he shall give due notice to the City Engineer so that proper inspection may be provided. Any work done in the absence of the City Engineer will be subject to rejection. The inspection of the work shall not relieve Owner of any of his obligations to fulfill the Agreement as prescribed. Defective work shall be made good and unsuitable materials will be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the City Engineer or Inspector and accepted.

I. REPAIR OF DAMAGED IMPROVEMENTS

Any damage to the water or sewer systems, concrete work or street paving, or other facilities and improvements constructed in connection with the Agreement that occurs after installation and prior to Final Acceptance shall be repaired to the satisfaction of the City Engineer by Owner before release of bond or final acceptance of completed work. City may, at its sole option, perform such repair or replacement if Owner has failed to commence such repair within 20 days after City has mailed written notice of the need for repairs or replacement to Owner and to Owner's surety. In such event, Owner agrees to pay the cost of such repair and replacement by City, and City may at its option recover such cost as a lien against the Subdivision or the lands therein.

If City determines that public safety requires repairs or replacements to be made before Owner or surety can be notified, City may complete such repairs or replacements and recover the costs thereof as provided above.

J. DUST CONTROL

Adequate dust and mud control shall be maintained by Owner on all streets within and without the subdivision until the paving of the streets is completed. "Adequate dust control" as used herein shall mean the sprinkling of the streets with water with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment onto any street area or private property adjacent to the subdivision. Whenever in the opinion of the City Engineer adequate dust control is not being

maintained on any street or streets as required by this paragraph, the City Engineer shall give notice to Owner to comply with the provision of the paragraph forthwith. Such notice may be personally served upon Owner or, if Owner is not an individual, upon any person who has signed this Agreement on behalf of Owner or a superintendent or foreman of Owner'S or Owner's subcontractor at the subdivision or, at the election of the Engineer, such notice may be mailed to Owner at his address on file with the City Engineer. If within 24 hours after such personal service of such notice or within 48 hours after the mailing thereof as herein provided, Owner shall not have commenced to maintain adequate dust control or shall at any time thereafter fail to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any such street or streets to be sprinkled, as he may deem advisable to eliminate the scattering of dust, by equipment and personnel of City or by contract as the City Engineer shall determine, and City may deduct the cost thereof from any deposits which the Owner has placed with the City. When the surfacing on any existing street is disturbed, this surfacing shall be replaced with temporary or permanent surfacing within fourteen (14) calendar days, and the roadway shall be maintained in a safe and passable condition at all times between the commencement and final completion, and adequate dust control shall be maintained during these operations.

K. STREET SURFACING AND UNDERGROUNDING OF UTILITIES

Owner agrees all existing overhead utilities within the boundaries of this subdivision, and on adjacent streets to the centerlines thereof shall be replaced or relocated in underground installations consistent with the Construction Plans For Riverwalk Drive Improvement Project. All new utilities shall be underground and all work shall be completed before installation of street surfacing, if any.

L. STREET SWEEPING

Owner shall pay for sweeping of streets within this tract following installation of paving and prior to acceptance of the Improvements by the City. City may provide such street sweeping services at its sole discretion and convenience. Owner shall keep streets and gutters free of any mud, debris or materials. If Owner fails to maintain streets in such condition which allows sweeping, City may remove any debris and deduct the cost thereof from any deposits which the Owner has placed with the City.

M. WARRANTY

Owner warrants that construction will not adversely affect any portion of adjacent properties.

N. PRECONSTRUCTION MEETING

Owner agrees to meet with the City at a preconstruction meeting upon request of the City. Subcontractors for public improvements shall be required to attend. Failure to do so shall draw a penalty of \$150.00 per sub-contractor, and stoppage of work until a preconstruction meeting is held.

O. BUILDING MATERIALS RECYCLING

Owner agrees to participate in any building materials recycling program as directed by the City. Participation shall also be required by all sub-contractors for both public improvements and home construction, to fullest extent possible.

ARTICLE III. SPECIAL PROVISIONS

A. EXCEPTION FOR SUCCESSOR AGENCY: Notwithstanding any other provision of this Agreement, for any portion of the Subject Property for which the Successor Housing Agency to the Former Madera Redevelopment Agency (“Successor Agency”) is the owner, the following provisions of this Agreement shall not apply: Article 1, Paragraph E and G. The Parties acknowledge the Successor Agency is a governmental agency.

B. SUCCESSORS IN INTEREST: Successors in interest to any portion of the Subject Property shall comply with Article 1, Paragraph E and G, and shall provide all required insurance, bonds, and security to the City for that portion of any remaining Improvements which may yet to be completed at the time of transfer. Said insurance, bonds, and security must be provided to the City within 30 days of obtaining a fee interest in a portion of the Subject Property.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

CITY OF MADERA:

SUBDIVIDER/OWNER:

By: _____
Andrew J. Medellin, Mayor

Successor Housing Agency to the Former
Madera Redevelopment Agency

APPROVED AS TO FORM:

By: _____
Bob Wilson, Executive Director

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

APPROVED:

By: _____
Keith Helmuth, City Engineer

NOTARY ACKNOWLEDGEMENT REQUIRED

EXHIBIT "A"
Legal Description

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

PARCEL 1: APN: (not assessed)

All that portion of the South half of Section 13 in Township 11 South, Range 17 East, Mount Diablo Base and Meridian, in the City of Madera, County of Madera, State of California according to the Official Plat thereof;

Lying South of the High Water mark of the Fresno River;

Lying North of Blocks 2 and 3 of Johnson's Addition to the Town, now City of Madera, according to the map thereof recorded March 15, 1888 in Book 3, Page 46 of Maps, in the office of the office of the Fresno County Recorder;

Lying North of Parcel Map recorded in Book 28, Page 171 of Parcel Maps.

EXCEPTING THEREFROM, all that portion of the South half of Sections 13 and 14 in Township 11 South, Range 17 East, Mount Diablo Base and Meridian, in the City of Madera, County of Madera, State of California according to the Official Plat thereof, as conveyed to Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded December 31, 2009 as Document No. 2009043336, of Official Records, described as follows;

BEGINNING, at the Northeast corner of Lot 5 in Block 3 of Johnson's Addition to the Town, now City of Madera, according to the map thereof recorded March 15, 1888 in Book 3, Page 46 of Maps, in the office of the office of the Fresno County Recorder;

Thence, South 72 degrees 54' West along the Northwesterly line of said Lot 5, 231.22 feet, more or less to the Westerly end of said Lot 5;

Thence, due North 50.00 feet;

Thence, North 77 degrees 15' East, 226.59 feet, more or less;

Thence, due South 32.00 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, any portion lying within that portion of Parcel 1 of Parcel Map recorded in Book 28, Page 171 of Parcel Maps, conveyed to the City of Madera as successor housing agency to the former Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded August 12, 2014, as Document No. 2014017662, of Official Records, more particularly described as follows:

That portion of Parcel 1, according to the Parcel Map thereof recorded in Book 28 of Maps at Page 171, Madera County Records, situated in Section 13, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, in the City of Madera, County of Madera, State of California, more particularly described as follows:

BEGINNING, at the northwest corner of said Parcel 1;

Thence, North 86°04'31" East, along the north line of said Parcel 1, a distance of 75.05 feet to the beginning of a non-tangent curve, concave northerly, with a radial bearing of South 22°51'36" East;

Thence, southwesterly, along the arc of said non-tangent curve, with radius of 325.00 feet, through a central angle of 13°45'38", an arc distance of 78.05 feet, to a point on the west line of said Parcel 1;

Thence, North 00°02'34" West, along said west line, a distance of 16.30 feet to the POINT OF BEGINNING.

PARCEL 2: APN: 007-022-14 (portion of)

All that portion of the South half of Section 13 in Township 11 South, Range 17 East, Mount Diablo Base and Meridian, in the City of Madera, County of Madera, State of California according to the Official Plat thereof, conveyed to Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded December 31, 2009 as Document No. 2009043336, of Official Records, described as follows;

EXHIBIT "A"
Legal Description
(continued)

BEGINNING, at the Northeast corner of Lot 5 in Block 3 of Johnson's Addition to the Town, now City of Madera, according to the map thereof recorded March 15, 1888 in Book 3, Page 46 of Maps, in the office of the office of the Fresno County Recorder;
Thence, South 72 degrees 54' West along the Northwesterly line of said Lot 5, 231.22 feet, more or less to the Westerly end of said Lot 5;
Thence, due North 50.00 feet;
Thence, North 77 degrees 15' East, 226.59 feet, more or less;
Thence, due South 32.00 feet to the POINT OF BEGINNING.

PARCEL 3: APN: 007-022-03 (portion of)

All that portion of Parcel 1 of Parcel Map recorded in Book 28, Page 171 of Parcel Maps, conveyed to the City of Madera as successor housing agency to the former Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded August 12, 2014, as Document No. 2014017662, of Official Records, more particularly described as follows:

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BEGINNING, at the northwest corner of said Parcel 1;
Thence, North 86°04'31" East, along the north line of said Parcel 1, a distance of 75.05 feet to the beginning of a non-tangent curve, concave northerly, with a radial bearing of South 22°51'36" East;
Thence, southwesterly, along the arc of said non-tangent curve, with radius of 325.00 feet, through a central angle of 13°45'38", an arc distance of 78.05 feet, to a point on the west line of said Parcel 1;
Thence, North 00°02'34" West, along said west line, a distance of 16.30 feet to the POINT OF BEGINNING.

ATTACHMENT 2

RESOLUTION NO. 19-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING ANNEXATION OF RIVERWALK SUBDIVISION (TRACT NO. 2016-03) INTO ZONE OF BENEFIT 51; CONFIRMING THE DIAGRAM AND ASSESSMENT FOR CITY WIDE LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT ZONE OF BENEFIT 51 FOR FISCAL YEAR (FY) 2019/2020; AUTHORIZING THE MAYOR TO EXECUTE THE COVENANT ON BEHALF OF THE CITY AND AUTHORIZING THE CITY CLERK TO FILE THE DIAGRAM AND ASSESSMENT WITH THE MADERA COUNTY AUDITOR

WHEREAS, the City of Madera Landscape Maintenance District (District) was formed by Resolution No. 91-67, approved June 17, 1991, pursuant to Part 2 of Division 15 of the Streets and Highways Code (Landscape and Lighting Act of 1972), herein the “Act”; and

WHEREAS, the recommended assessments for FY 2019/2020 reflect the cost of landscape maintenance provided by the City for said fiscal year; and

WHEREAS, all of the owners of property proposed to be annexed to the Zone of Benefit 51 of said District consisting of Riverwalk Subdivision, as described in Exhibit “A” attached hereto and incorporated herein by reference, have consented to said annexation and such annexation may be ordered without notice and hearing or filing of engineer’s report, or both;

WHEREAS, the property owner has agreed that the annual assessment is proportional to, and no greater than, the special benefit conferred on the property by being annexed into the Landscape Maintenance District; and

WHEREAS, the property owner has consented to an annual change in the range of the assessment in the amount of the Engineering News Record Construction Cost (ENRCC) Index (Los Angeles), plus two percent (2%). The property owner agreed that if such change in the range of the assessment is implemented less frequently than an annual basis, the change may be based upon the ENRCC Index since the most recent change in the assessment plus two percent per year;

WHEREAS, the property owner further agrees that temporary decreases in assessment do not represent a waiver of other provisions of this covenant and that the assessment may later be reset to an amount consistent with the assessment prior to the reduction plus the total change in the ENRCC Index plus two percent per year but only to the degree necessary to cover actual and reasonable costs, provided such assessment is consistent with the terms of this covenant.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY, finds, orders and resolves as follows:

1. The above recitals are true and correct.
2. That the public interest and convenience require that certain property described in Exhibit "A" and as diagramed in Exhibit "B," both of which are attached hereto and by reference incorporated herein, be annexed to City Landscape Maintenance District as Zone of Benefit 51 for the maintenance and servicing of landscaping facilities.

3. The Mayor is authorized to execute the Covenant Landscape Maintenance District Zone Of Benefit 51 on behalf of the City.
4. The City Council hereby confirms the diagram and annual assessments and levies the assessments for FY 2019/2020 for the same, as identified in Exhibits "A," "B" and "C," and as set forth in the agreement "Covenant Landscape Maintenance District Zone of Benefit 51."
5. Pursuant to Section 22641 of the Streets and Highways Code, the City Clerk is authorized and directed to forthwith file the diagram and assessments with Auditor of Madera County.
6. This resolution is effective immediately upon adoption.

* * * * *

EXHIBIT "A"
Legal Description

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

PARCEL 1: APN: (not assessed)

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Lying South of the High Water mark of the Fresno River;

Lying North of Blocks 2 and 3 of Johnson's Addition to the Town, now City of Madera, according to the map thereof recorded March 15, 1888 in Book 3, Page 46 of Maps, in the office of the office of the Fresno County Recorder;

Lying North of Parcel Map recorded in Book 28, Page 171 of Parcel Maps.

EXCEPTING THEREFROM, all that portion of the South half of Sections 13 and 14 in Township 11 South, Range 17 East, Mount Diablo Base and Meridian, in the City of Madera, County of Madera, State of California according to the Official Plat thereof, as conveyed to Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded December 31, 2009 as Document No. 2009043336, of Official Records, described as follows;

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Thence, due North 50.00 feet;
Thence, North 77 degrees 15' East, 226.59 feet, more or less;
Thence, due South 32.00 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, any portion lying within that portion of Parcel 1 of Parcel Map recorded in Book 28, Page 171 of Parcel Maps, conveyed to the City of Madera as successor housing agency to the former Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded August 12, 2014, as Document No. 2014017662, of Official Records, more particularly described as follows:

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BEGINNING, at the northwest corner of said Parcel 1;
Thence, North 86°04'31" East, along the north line of said Parcel 1, a distance of 75.05 feet to the beginning of a non-tangent curve, concave northerly, with a radial bearing of South 22°51'36" East;
Thence, southwesterly, along the arc of said non-tangent curve, with radius of 325.00 feet, through a central angle of 13°45'38", an arc distance of 78.05 feet, to a point on the west line of said Parcel 1;
Thence, North 00°02'34" West, along said west line, a distance of 16.30 feet to the POINT OF BEGINNING.

PARCEL 2: APN: 007-022-14 (portion of)

All that portion of the South half of Section 13 in Township 11 South, Range 17 East, Mount Diablo Base and Meridian, in the City of Madera, County of Madera, State of California according to the Official Plat thereof, conveyed to Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded December 31, 2009 as Document No. 2009043336, of Official Records, described as follows;

EXHIBIT "A"
Legal Description
(continued)

BEGINNING, at the Northeast corner of Lot 5 in Block 3 of Johnson's Addition to the Town, now City of Madera, according to the map thereof recorded March 15, 1888 in Book 3, Page 46 of Maps, in the office of the office of the Fresno County Recorder;
Thence, South 72 degrees 54' West along the Northwesterly line of said Lot 5, 231.22 feet, more or less to the Westerly end of said Lot 5;
Thence, due North 50.00 feet;
Thence, North 77 degrees 15' East, 226.59 feet, more or less;
Thence, due South 32.00 feet to the POINT OF BEGINNING.

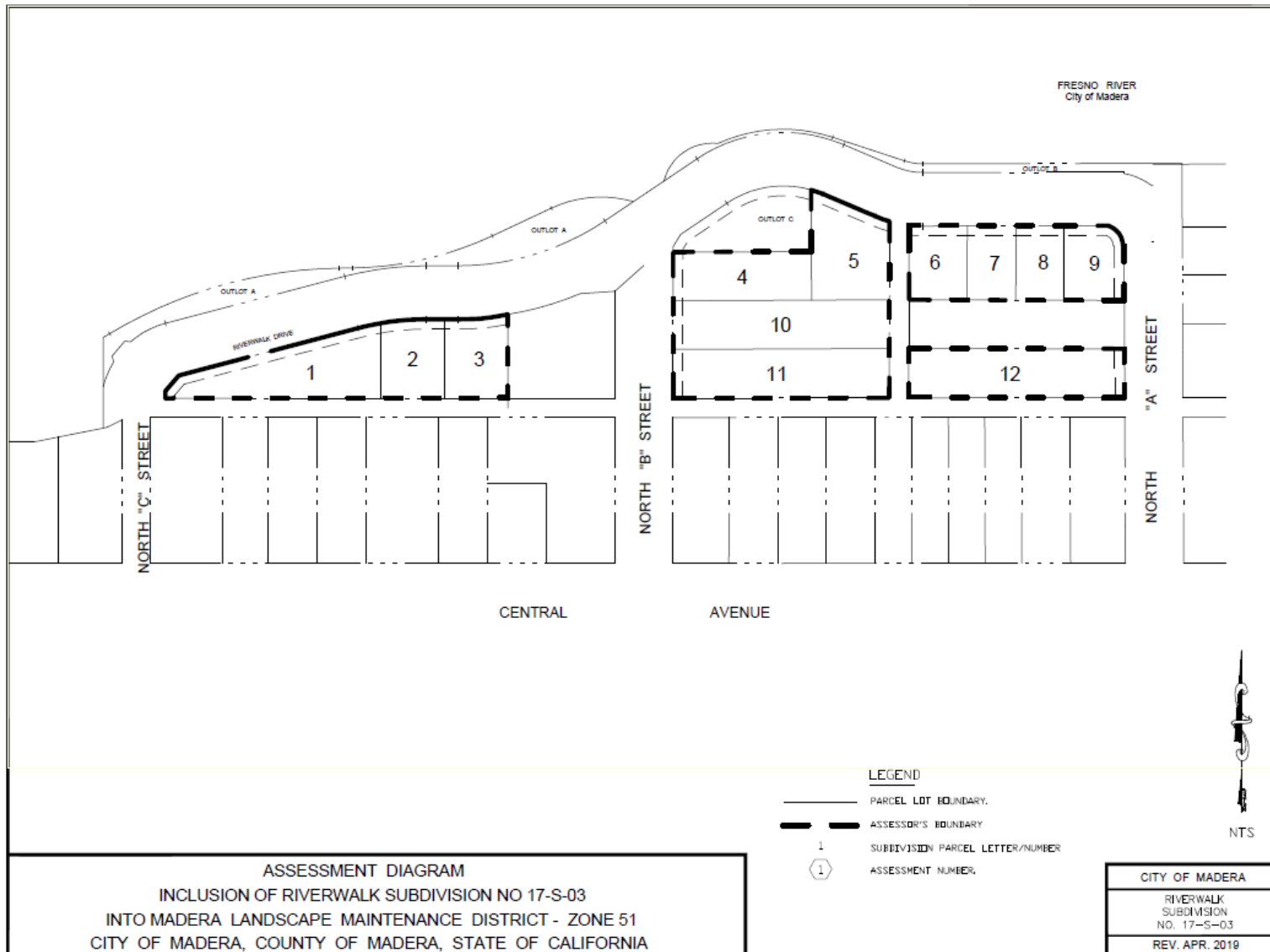
PARCEL 3: APN: 007-022-03 (portion of)

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Thence, southwesterly, along the arc of said non-tangent curve, with radius of 325.00 feet, through a central angle of 13°45'38", an arc distance of 78.05 feet, to a point on the west line of said Parcel 1;
Thence, North 00°02'34" West, along said west line, a distance of 16.30 feet to the POINT OF BEGINNING.

**EXHIBIT B
ASSESSMENT DIAGRAM**



**EXHIBIT C
ASSESSMENT AMOUNTS**

Lot	Owner	Assessment Amount (FY 2019/2020)
1	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
2	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
3	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
4	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
5	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
6	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
7	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
8	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
9	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
10	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
11	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00
12	Successor Housing Agency to the Former Madera Redevelopment Agency	\$15.00

ATTACHMENT 3

RECORDING REQUESTED BY:
City of Madera
WHEN RECORDED RETURN TO:
City of Madera
205 W. 4th Street
Madera, CA 93637
Attention: City Clerk

Fee Waived per Section 27383 & 27388.1(a)(2)(D) of the Government Code

**COVENANT
LANDSCAPE MAINTENANCE DISTRICT
ZONE OF BENEFIT 51**

WHEREAS, Successor Housing Agency to the Former Madera Redevelopment Agency hereinafter referred to as “Covenantor”, is the owner of the real property situated in the City of Madera, County of Madera, State of California, hereinafter referred to as “Subject Property” and more particularly described in attached Exhibit “A”; and

WHEREAS, the Covenantor hereby warrants that any and all parties having record title interest in the Subject Property which may ripen into a fee have subordinated to this instrument; and

WHEREAS, all such instruments of Subordination, if any, are attached hereto and made a part of this instrument; and

WHEREAS, Covenantor is required by the City as a condition of General Plan Amendment (GPA) 2016-03, Rezoning (REZ) 2016-03, Tentative Subdivision Map (TSM) 2016-03 & Precise Plan (PPL) 2016-01 approval to annex to the City’s Landscape Maintenance District; and

WHEREAS, the Development Review Committee of the City of Madera conditionally approved the General Plan Amendment, Rezoning, Precise Plan, and

Tentative Subdivision Map for said residential parcels; and

WHEREAS, said resolution requires that maintenance of the landscaping associated with the Subject Property shall be the responsibility of the City's Landscape Maintenance District.

NOW, THEREFORE, it is agreed:

1. In consideration of the foregoing and the approval of the General Plan Amendment, Rezoning, Precise Plan, and Tentative Subdivision Map for the residential parcels, by the City of Madera, the undersigned hereby covenants, promises and agrees with the City of Madera for the benefit of said City.

2. The Covenantor consents to annexation of said Subject Property to the City's Landscape Maintenance District, has petitioned the City to annex said Subject Property to said district pursuant to Streets and Highways Code Section 22605, and pursuant to California Constitution Article, XIII D, section 5(b), waives any right to protest or object to such annexation.

3. The Covenantor agrees that the Subject Property receives a special benefit, as the term is defined in California Constitution Article, XIII D, section 2(i), from being annexed to Landscape Maintenance District, and that special benefit includes, but is not limited to, the right and ability to develop the Subject Property.

4. The Covenantor consents to an annual assessment on the Subject Property currently in an amount not to exceed \$15 per each of the 12 lots. The Covenantor agrees that this assessment is proportional to, and no greater than, the special benefit conferred on the Subject Property by being annexed into the Landscape Maintenance District. The

Covenantor also consents to an annual change in the range of the assessment in the amount of the Engineering News Record Construction Cost Index (ENRCC), plus two percent (2%). The Covenantor agrees that if such change in the range of the assessment is implemented less frequently than an annual basis, the change may be based upon the total change in the ENRCC Index since the most recent change in the assessment plus two percent per year. The Covenantor further agrees that temporary decreases in assessment do not represent a waiver of other provisions of this covenant and that the assessment may later be reset to an amount consistent with the assessment prior to the reduction plus the total change in the ENRCC Index plus two percent per year but only to the degree necessary to cover actual and reasonable costs.

5. The Covenantor agrees that he/she has received the written notice required by California Constitution Article, XIII D, Section 4(c).

6. The Covenantor agrees that this shall constitute a ballot in support of the proposed assessment pursuant to California Constitution Article, XIII D, Section 4(d).

7. Furthermore, should City hold a hearing notwithstanding such waiver, Covenantor waives the requirement of 45 days' notice of such hearing in favor of a five-day notice of such hearing.

8. The Covenantor shall fully disclose this covenant to every potential purchaser of the Subject Property.

9. It is the intention of the parties hereof that this document shall constitute a covenant in favor of the City of Madera and shall run with the land and be binding upon the undersigned, its grantees, heirs, successors and assigns.

10. The Covenant shall be released and be of no further effect upon written determination by the undersigned and the City Engineer of the City of Madera that it's continued existence and enforcement are no longer necessary.

11. The provisions of this Covenant shall be deemed independent and severable and the validity or partial invalidity or unenforceability of any other provision or portion thereof shall not affect the validity or enforceability of any one provision thereof. Whenever the context of the Covenant so requires, in interpreting this Covenant, any gender includes the other genders, the singular includes the plural, and the plural includes the singular.

Dated: _____

///

WITNESS the execution of this covenant including Exhibit A the day and year first above written.

CITY OF MADERA:

By: _____
Andrew J. Medellin, Mayor

COVENANTOR:

By: _____
Successor Housing Agency to the
Former Madera Redevelopment Agency

APPROVED AS TO FORM:

By: _____
City Attorney

***NOTARY ACKNOWLEDGEMENT
REQUIRED***

ATTEST:

By: _____
City Clerk

APPROVED:

By: _____
Keith B. Helmuth,
City Engineer

EXHIBIT "A"
Legal Description

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Lying North of Blocks 2 and 3 of Johnson's Addition to the Town, now City of Madera, according to the map thereof recorded March 15, 1888 in Book 3, Page 46 of Maps, in the office of the office of the Fresno County Recorder;

Lying North of Parcel Map recorded in Book 28, Page 171 of Parcel Maps.

EXCEPTING THEREFROM, all that portion of the South half of Sections 13 and 14 in Township 11 South, Range 17 East, Mount Diablo Base and Meridian, in the City of Madera, County of Madera, State of California according to the Official Plat thereof, as conveyed to Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded December 31, 2009 as Document No. 2009043336, of Official Records, described as follows;

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Thence, South 72 degrees 54' West along the Northwesterly line of said Lot 5, 231.22 feet, more or less to the Westerly end of said Lot 5;

Thence, due North 50.00 feet;

Thence, North 77 degrees 15' East, 226.59 feet, more or less;

Thence, due South 32.00 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, any portion lying within that portion of Parcel 1 of Parcel Map recorded in Book 28, Page 171 of Parcel Maps, conveyed to the City of Madera as successor housing agency to the former Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded August 12, 2014, as Document No. 2014017662, of Official Records, more particularly described as follows:

That portion of Parcel 1, according to the Parcel Map thereof recorded in Book 28 of Maps at Page 171, Madera County Records, situated in Section 13, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, in the City of Madera, County of Madera, State of California, more particularly described as follows:

BEGINNING, at the northwest corner of said Parcel 1;

Thence, North 86°04'31" East, along the north line of said Parcel 1, a distance of 75.05 feet to the beginning of a non-tangent curve, concave northerly, with a radial bearing of South 22°51'36" East;

Thence, southwesterly, along the arc of said non-tangent curve, with radius of 325.00 feet, through a central angle of 13°45'38", an arc distance of 78.05 feet, to a point on the west line of said Parcel 1;

Thence, North 00°02'34" West, along said west line, a distance of 16.30 feet to the POINT OF BEGINNING.

PARCEL 2: APN: 007-022-14 (portion of)

All that portion of the South half of Section 13 in Township 11 South, Range 17 East, Mount Diablo Base and Meridian, in the City of Madera, County of Madera, State of California according to the Official Plat thereof, conveyed to Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded December 31, 2009 as Document No. 2009043336, of Official Records, described as follows;

EXHIBIT "A"
Legal Description
(continued)

BEGINNING, at the Northeast corner of Lot 5 in Block 3 of Johnson's Addition to the Town, now City of Madera, according to the map thereof recorded March 15, 1888 in Book 3, Page 46 of Maps, in the office of the office of the Fresno County Recorder;
Thence, South 72 degrees 54' West along the Northwesterly line of said Lot 5, 231.22 feet, more or less to the Westerly end of said Lot 5;
Thence, due North 50.00 feet;
Thence, North 77 degrees 15' East, 226.59 feet, more or less;
Thence, due South 32.00 feet to the POINT OF BEGINNING.

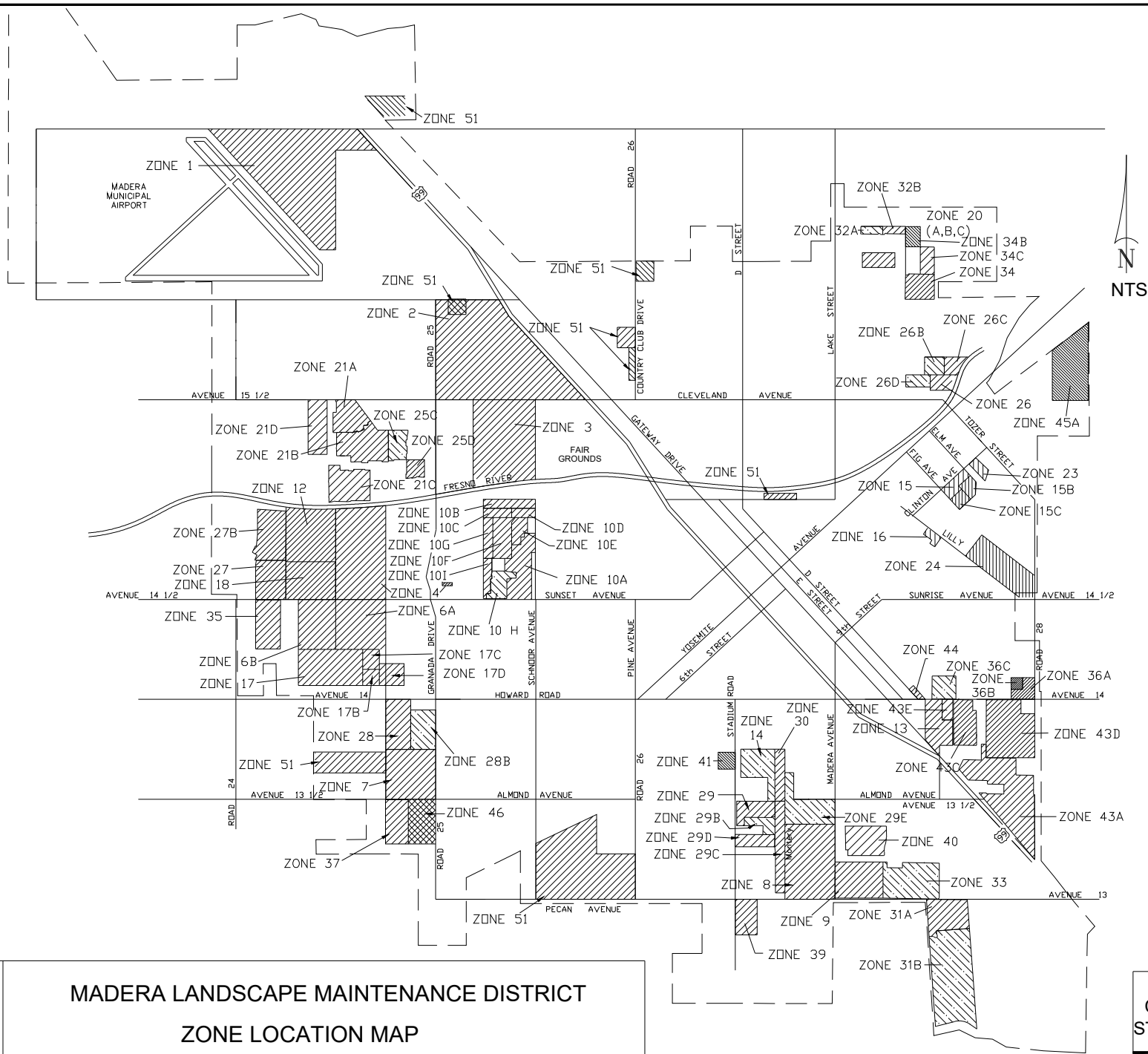
PARCEL 3: APN: 007-022-03 (portion of)

All that portion of Parcel 1 of Parcel Map recorded in Book 28, Page 171 of Parcel Maps, conveyed to the City of Madera as successor housing agency to the former Madera Redevelopment Agency, a public body, corporate and politic, in the Deed recorded August 12, 2014, as Document No. 2014017662, of Official Records, more particularly described as follows:

That portion of Parcel 1, according to the Parcel Map thereof recorded in Book 28 of Maps at Page 171, Madera County Records, situated in Section 13, Township 11 South, Range 17 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, in the City of Madera, County of Madera, State of California, more particularly described as follows:

BEGINNING, at the northwest corner of said Parcel 1;
Thence, North 86°04'31" East, along the north line of said Parcel 1, a distance of 75.05 feet to the beginning of a non-tangent curve, concave northerly, with a radial bearing of South 22°51'36" East;
Thence, southwesterly, along the arc of said non-tangent curve, with radius of 325.00 feet, through a central angle of 13°45'38", an arc distance of 78.05 feet, to a point on the west line of said Parcel 1;
Thence, North 00°02'34" West, along said west line, a distance of 16.30 feet to the POINT OF BEGINNING.

ATTACHMENT 4



MADERA LANDSCAPE MAINTENANCE DISTRICT
ZONE LOCATION MAP

CITY OF MADERA
COUNTY OF MADERA
STATE OF CALIFORNIA
 REV. APR. 2019