

SCHEDULED MATTER

SUBJECT: AUTHORIZATION TO SUBORDINATE DEVELOPMENT FEE PAYMENT PLAN AGREEMENT – HENDERSON VILLAGE APARTMENTS – PACIFIC RIM MIXED USE PROJECT (2012-002)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: On March 5, 2013, the City Council approved the Pacific Rim Mixed Use Project that is located generally west of the southwest corner of Henderson Avenue and Newcomb Street. The mixed use project will consist of two multi-family apartment complexes, a commercial area (including retail shops, fast-food, and a financial pad), an office building, and a personal storage facility.

The developer of the Pacific Rim Mixed Use Project had requested the use of the Development Fee Payment Plan for all phases of the development. Traditionally, the Development Fee Payment Plan has been used for commercial and low-income housing developments. On March 5, 2013, the City Council approved the use of the Development Fee Payment Plan on the project as a whole, including the multi-family housing element, making the Henderson Village Apartments eligible for the Development Fee Payment Plan.

On January 21, 2014, Paul Owhadi, of the Porterville Henderson Association, contacted staff to request that the Development Fee Payment Plan, that staff had been working on with the applicant, be subordinated to the construction loan. The lender that the developer is working with is requiring that the Development Fee Payment Plan be subordinate to their loan for them to provide financing for the project. Paul Owhadi also requested that the subsequent Development Fee Payment Plans for the Pacific Rim Mixed Use Project development phases be subordinate to the lenders priority. The Development Fee Payment Plan for the Henderson Village Apartments, Phase One of the project, is \$1,248,696.18. The development fees for the remainder of the project have not been calculated, but the development fees are estimated to be at least as much as Phase One for the total remaining phases of the project. Fees are calculated when the Building Department receives a full set of plans to review for the building permit.

Development Fee Payment Plans have periodically been subordinated, at the request of the applicant, to accommodate lenders requiring to be first priority on the deed of trust. The risk of being subordinate to the loan is that if the borrower were to default on their loan, there might not be enough equity in the property to

satisfy the debt owed on the Development Fee Payment Plan to the City of Porterville.

RECOMMENDATION:

That the City Council:

- 1) Approve the Subordination Agreement pursuant to the approval of the City Attorney for the Henderson Village Apartments Development Fee Payment Plan and authorize the Mayor to sign all necessary documents; and
- 2) Determine whether to approve the subordination of the Development Fee Payment Plans of subsequent phases of the Pacific Rim Mixed Use Project and authorize the Mayor to sign all necessary documents if approved

ATTACHMENTS:

Draft Development Fee Payment Plan

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF PORTERVILLE
291 N. MAIN STREET
PORTERVILLE, CA 93257
ATTN: P. Hildreth

DEVELOPMENT FEE PAYMENT PLAN
CITY-WIDE AGREEMENT NO. 02-2013

Pursuant to Resolution No. 37-2012 of the City of Porterville, Porterville Henderson Association, owner of real property located at 1711 W. Henderson Avenue, Porterville, Tulare County, California, legally described as:

(SEE ATTACHED EXHIBIT A)

agrees to pay the City of Porterville the amount of \$1,248,696.18 at the rate of \$124,869.62 for nine equal payments and a final payment of \$124,869.60. The first of said payments shall be due, on or about December 10, 2013, and subsequent payment shall be made on the 1st day of December of each year thereafter until the principal has been paid in full. The principal sum due up front is for building permit, electrical permit, engineering, plumbing permit, water service connection, water service, sewer service connection service initiation, and seismic tax fees for the property located at 1711 W. Henderson Avenue, Porterville. School impact fees in the amount of \$488,277.35, the public works permit of \$319.00, the state building permit fee of \$440.00 are not included in this agreement and must be paid prior to final inspection and issuance of certificate of occupancy.

As part of the building permit process, the City will estimate your water use and calculate impact fees. Water use will be monitored for one year to determine actual average daily use and fees at which time water, sewer, and wastewater fees will be recalculated based upon actual usage. An increase in actual water usage will result in a request for payment for additional fees. In the event the actual water usage is less than the estimate, an adjustment will be made to this agreement.

In the event the undersigned sells or otherwise transfer said real property, the unpaid balance of said

**ATTACHMENT
ITEM NO. 1**

principal shall immediately become due and payable in full, and if not so paid, said sum shall become a lien on said real property and said lien shall attach as of the date of this agreement.

In the event any installment of principal is delinquent for a period in excess of ninety (90) days, late charges shall be applied to the unpaid installment in accordance with City policy and the unpaid balance shall become a lien on said real property. Should the installment remain unpaid for an additional 90 days, City utility services shall be disconnected.

Any lien herein created may be added to the tax bill for the unpaid balance of principal and shall become a lien on said real property and may be collected in the manner real property taxes are collected by the City of Porterville. In the event said sum is not paid at the time said taxes are due, it may be collected in the same manner as delinquent taxes and said real property may be sold to satisfy said lien in the same manner that real property is sold to satisfy delinquent taxes.

If any action is brought to enforce payment of the above obligation, the prevailing party shall be entitled to all costs, including reasonable attorney fees.

Dated this _____ day of _____

Signed

Caleb Roope, General Partner

APPROVED AS TO FORM:

City Attorney

FOR THE CITY OF PORTERVILLE:

Cameron J. Hamilton, Mayor

John D. Lollis, City Clerk