

SCHEDULED MATTER

SUBJECT: AUTHORIZATION TO MODIFY DEVELOPMENT FEE PAYMENT PLAN AGREEMENT – PACIFIC RIM MIXED-USE PROJECT (01-2014)

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

BACKGROUND: On June 5, 2001, City Council adopted Resolution 84-2001, approving the Development Fee Payment Plan program (Payment Plan) to encourage development within city limits and support an entrepreneurial climate. On October 16, 2001, City Council adopted Resolution 125-2001, extending the Payment Plan from a five-year payment plan to a ten-year payment plan. On April 17, 2012, City Council adopted Resolution 37-2012, allowing multi-unit housing developments for low- and moderate-income families to be eligible for the Payment Plan.

On March 5, 2013, City Council approved the Pacific Rim Mixed-Use Project (PRC 2012-002). With the approval of the project, City Council also approved the use of the Payment Plan program (DFPP 01-2014). The Payment Plan is not typically allowed to be utilized on market-rate multi-family housing developments; however, the applicant requested the use of the Payment Plan on the entire project (including the market-rate multi-family housing portion).

On February 10, 2014, City Council approved subordinating the Payment Plan to the lender for the Henderson Village Apartments.

On March 4, 2014, City Council denied the applicant's request to modify the Payment Plan and Payment Plan Deed of Trust to make the balance of the Payment Plan transferable upon sale of the property.

COMMENT: Staff met with Mr. Paul Owhadi on May 9, 2014, to discuss the project. At this meeting, the developer agreed to make the first payment of the fees at the time the first project permits were pulled, but applicant requested an amendment be made to the Payment Plan that would make the next payment of the Payment Plan due at the time of final occupancy or within three (3) years of the date the first permits were pulled, whichever occurred first (with the subsequent installments paid annually thereafter).

On June 3, 2014, the applicant submitted the payment of the initial fees, as required by the Payment Plan, along with a letter protesting the terms of payments in regards to the Payment Plan pursuant to Government Code Section 66020(a).

DD JS Appropriated/Funded MB CM AL
ACTING

Item No. 24

The letter of protest is a mechanism to allow the applicant to be issued a building permit while requesting the City Council to amend the current payment structure of the Payment Plan.

ANALYSIS: The Payment Plan as currently written requires the first recurring payment to be due and payable one year from the date of the Payment Plan's execution. Historically, all Payment Plans have complied with this component of the program. Approving the applicant's request could constitute an amendment to the Development Fee Payment Plan program and subsequent agreements would have this option.

RECOMMENDATION: That the City Council:

- 1) Determine whether to approve or deny the requested amendment, making the first recurring payment due at the time of final occupancy with a time limit not to exceed three years to Payment Plan 01-2014 and authorize the Mayor to sign all necessary documents, if approved.
- 2) Provide staff direction regarding altering the terms of the Development Fee Payment Plan (Resolution 37-2012), making the next payment due at the time of final occupancy with a time limit not to exceed three years (and subsequent installments paid annually thereafter).

ATTACHMENTS:

- 1) Resolution 37-2012
- 2) Development Fee Agreement 01-2014
- 3) Porterville Ventures L.P., Letter of Protest

RESOLUTION NO. 37 -2012

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF PORTERVILLE
RESCINDING RESOLUTIONS 107-1998, 87-2001, AND 64-2002 AND
APPROVING A TEN (10) YEAR
DEVELOPMENT FEE PAYMENT PLAN

WHEREAS: The City of Porterville aims to support development within the City limits and encourage entrepreneurs by removing obstacles and establishing a climate that fosters growth and the entrepreneurial spirit; and

WHEREAS: It has been determined that a reduction in the burden of initial development costs to new and expanding industries will assist in the establishment of these businesses; and

WHEREAS: It has been further determined that the reduction in the burden of initial development costs will assist in the establishment of multi-unit housing development for low and moderate income families; and

WHEREAS: The Development Fee Payment Plan will generate significant savings to expanding and newly locating businesses and establishment of additional multi-unit housing developments for low and moderate income families.

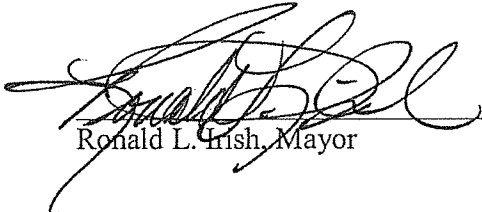
NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby rescind Resolutions 107-1998, 87-2001, and 64-2002, and approve a Development Fee Payment Plan in accordance with the following:

- a. All businesses within the City limits of Porterville shall be eligible to participate in the City's Development Fee Payment Plan;
- b. All multi-unit housing developments for low and moderate income families within the City limits of Porterville shall be eligible to participate in the City's Development Fee Payment Plan;
- c. Building permit, sewer, water, storm drainage, wastewater treatment facility, and transportation impact fees, as calculated by the City Engineering and Building staff, shall be eligible for payment under this plan;
- d. Projects requiring major Master Plan infrastructure improvements and Home Occupancy businesses shall not be eligible to participate in the Development Fee Payment Plan;

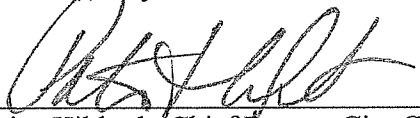
**ATTACHMENT
ITEM NO. 1**

- e. Prior to the commencement of on-site construction there shall be on file with the City Finance Department an agreement signed by the owner of the property and the Mayor. This agreement shall set forth the payment schedule in accordance with the fees determined by the City's schedule of charges and fees in effect on the date of the signed agreement; and
- f. The Development Fee Payment Plan shall be recorded as a lien against the property being developed; and
- g. The Development Fee Payment Plan shall allow the property owner to pay their development fees over a period up to ten (10) years without interest or administrative fees, with the first installment due at time of permit issuance and annual installments thereafter.

APPROVED AND ADOPTED this 17th day of April, 2012.


Ronald L. Irish, Mayor

ATTEST:
John D. Lollis, City Clerk

By: 
Patrice Hildreth, Chief Deputy City Clerk

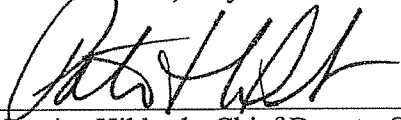
STATE OF CALIFORNIA)
CITY OF PORTERVILLE) SS
COUNTY OF TULARE)

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a regular meeting of the Porterville City Council duly called and held on the 17th day of April, 2012.

THAT said resolution was duly passed, approved, and adopted by the following vote:

Council:	McCRACKEN	HAMILTON	IRISH	SHELTON	WARD
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk


By: Patrice Hildreth, Chief Deputy City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF PORTERVILLE
291 N. MAIN STREET
PORTERVILLE, CA93257
ATTN: P. Hildreth

**DEVELOPMENT FEE PAYMENT PLAN
CITY-WIDE AGREEMENT NO. 01-2014_____**

Pursuant to Resolution No. 37-2012 of the City of Porterville, Porterville Ventures LP, 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 May 15, 2014 (at the time the project permits are issued), and subsequent payment shall be made on the 15th day of May 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 transfers said real property, the unpaid balance of said 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; specifically, the parties agree that a late charge equal to interest on the principal amount as if it had been accruing from the date of the first payment was due, will be assessed and will continue until such time as the deferred amounts are repaid in full or the Default is cured, at the default rate of the lesser of seven percent (7%), compounded annually, or the highest rate permitted by law. A Promissory Note and Deed of Trust shall be recorded in conjunction with the execution of this Agreement. The parties have agreed to enter into a separate Subordination Agreement with regard to this Deed of Trust.

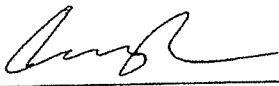
Should the installment remain unpaid for an additional 90 days, City utility services maybe disconnected. Any lien herein created may be added to the tax bill for the unpaid balance of principal and shall become a lien on said real property and may be collected in the manner real property taxes are collected 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.

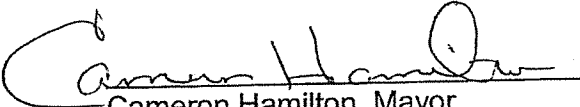
Dated this 11th day of April, 2014

FOR PORTERVILLE VENTURES LP

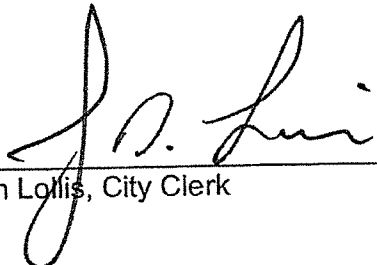


Caleb Roope, General Partner

FOR THE CITY OF PORTERVILLE

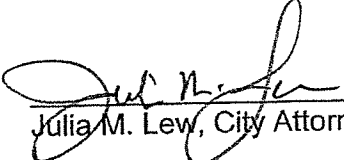


Cameron Hamilton, Mayor



John Lollis, City Clerk

APPROVED AS TO FORM



Julia M. Lew, City Attorney

ALL-PURPOSE ACKNOWLEDGMENT

State of Idaho

County of Ada

On April 11, 2014
Date

before me, Peter Van Dorne, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

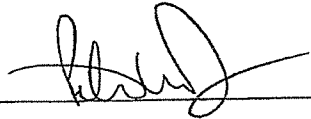
personally appeared Caleb Roope

Name(s) of Signer(s)

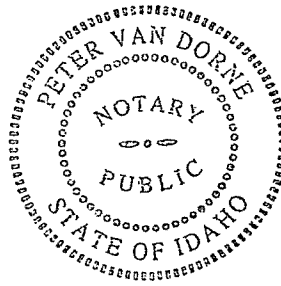
Who proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), 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 of Notary Public
Commission Expires: 07/26/2017



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Tulare

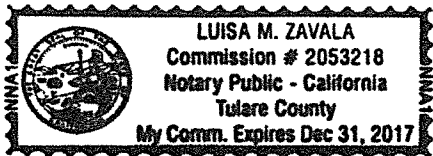
On May 30, 2014 before me, Luisa M. Zavala Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Cameron J. Hamilton and John D. Lollis
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: Luisa M. Zavala
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Dev. Fee Payment Plan Agreement

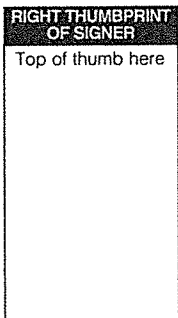
Document Date: 4/11/2014 Number of Pages: _____

Signer(s) Other Than Named Above: Caleb Roope

Capacity(ies) Claimed by Signer(s)

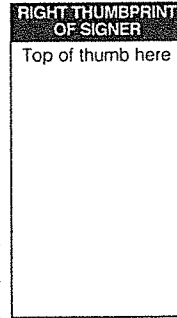
Signer's Name: _____ Signer's Name: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

- Corporate Officer — Title(s): _____
- Individual
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT A

Legal Description:

Parcel 4 of Parcel Map No. 5097 in the City of Porterville, County of Tulare, State of California per map recorded in Book 52, page 4 of Parcel Maps in the Office of the County Recorder of said County.

Porterville Ventures L.P., a California Limited Partnership

May 14, 2014

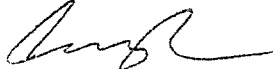
City of Porterville
Julie Phillips, Community Development Manager
291 N. Main Street
Porterville, CA 93257

RE: Protest of the Terms of Payments to the Development Fee Payment Plan City-Wide Agreement No. 02-2013.

Ms. Phillips,

Porterville Ventures L.P., a California Limited Partnership is submitting this letter to protest the Terms of Payments as described in the Development Fee Payment Plan City-Wide Agreement No. 02-2013 executed on April 11, 2014, pursuant to Government Code Section 66020(a).

Sincerely,



Caleb Roope,
General Partner

RECEIVED

JUN - 3 2014

**City of Porterville
Public Works Dept.**

**ATTACHMENT
ITEM NO. 3**