

SCHEDULED MATTER

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

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: On June 5, 2001, City Council approved Resolution 84-2001, approving the Development Fee Payment Plan program (Payment Plan) to encourage development within city limits and encourage an entrepreneurial climate. On October 16, 2001, City Council approved 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 approved Resolution 37-2012, allowing multi-unit housing developments for low- and moderate-income families to be eligible for the Plan.

City Council approved the Pacific Rim Mixed Use Project that is located generally west of the southwest corner of Henderson Avenue and Newcomb Street on March 5, 2013. With the approval of the project, City Council approved the use of the Development Fee Payment Plan on the project as a whole. On February 10, 2014, City Council approved subordinating the Payment Plan to the lender for the Henderson Village Apartments.

The City Attorney has created the Development Fee Payment Plan agreement, Development Fee Payment Plan Deed of Trust, and Subordination Agreement for the Henderson Village Apartments. The City Attorney, at the direction of City Council, included a penalty clause in the Payment Plan, resulting in the interest rate escalating to seven (7) percent on the principal amount for any payments that are delinquent in excess of ninety days (90), as well as a penalty for default triggering an increase to ten (10) percent interest on the outstanding fees and reasonable attorney fees and the cost of evidence of title.

The applicant has requested that section twenty-five (25) of the Development Fee Payment Plan Deed of Trust as well the corresponding section of the Payment Plan be removed from the agreement. Section twenty-five (25) states:

“Should Trustor sell, convey, transfer or dispose of the Development, or any part thereof, or any interest therein, or place any lien or encumbrance thereon subordinate to the lien created hereby, or agree to do so (whether voluntarily or any operation of law), without the written consent of Beneficiary being first

obtained, except as permitted in the Agreement, Beneficiary shall have the right, at its option, to declare all sums secured hereby forthwith due and payable. This option may be exercised at any time after the occurrence of such event and the acceptance of one or more installments from any person thereafter shall not constitute a waiver of Beneficiary's option. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions."

This language corresponds with the Payment Plan agreement that was approved on June 5, 2001. The applicant's requested change in the Payment Plan language would make the Payment Plan transferable upon sale of the property, which results in a deviation from earlier agreements. Staff is seeking Council's direction on whether the City wishes to establish this precedent.

RECOMMENDATION: That the City Council:

- 1) Approve a provision that adds a seven (7) percent interest rate in the event the payment plan becomes delinquent in excess of ninety (90) days, as well as a ten (10) percent penalty on the remaining loan balance in the event of default in addition to the collection of reasonable attorney fees and the cost of evidence of title on all Development Fee Payment Plans moving forward; and
- 2) Provide direction to staff as to the removal of section twenty-five (25) of the Development Fee Payment Plan Deed of Trust and corresponding section of the Development Fee Payment Plan.

ATTACHMENTS: 1) Resolution 84-2001  
2) Draft Development Fee Payment Plan Deed of Trust  
3) Draft Development Fee Payment Plan  
4) Draft Subordination Agreement

RESOLUTION NO. 84-2001

A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF PORTERVILLE APPROVING A CITY WIDE  
DEVELOPMENT FEE PAYMENT PLAN

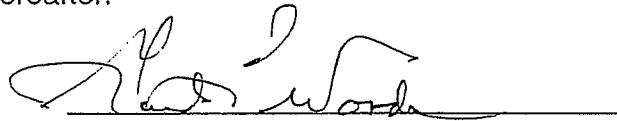
WHEREAS: The City of Porterville aims to support development within the City limits, encourage entrepreneurs by removing obstacles, and establish an entrepreneurial climate; and

WHEREAS: It has been determined that a reduction in the initial burden of start-up costs to new and expanding industries will assist in the establishment of these businesses within the community of Porterville; and

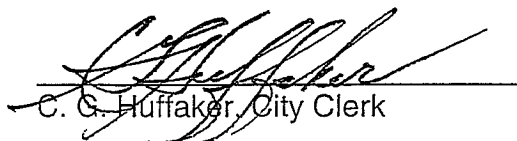
WHEREAS: The Development Fee Payment Plan will generate significant savings to expanding and newly locating businesses.

NOW, THEREFORE, BE IT RESOLVED: That the City Council of the City of Porterville does hereby approve a Development Fee Payment Plan in accordance with the following:

- a. All businesses located within the City limits of Porterville shall be eligible to participate in the City's Development Fee Payment Plan;
- b. Building permit, sewer, water, storm drainage, wastewater treatment facility, and transportation impact fees, as determined by the City Engineering and Building staff, shall be eligible for payment under this plan.
- c. Prior to the commencement of on-site construction there shall be on file with the City Finance Division 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.
- d. The Development Fee Payment Plan shall allow such companies to pay their development fees over five (5) years without interest or administrative fee, with the first installment due upon occupancy and annual installments thereafter.

  
Gordon T. Woods, Mayor

ATTEST:

  
C. G. Huffaker, City Clerk

**ATTACHMENT  
ITEM NO. 1**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

CITY OF PORTERVILLE  
P. O. BOX 432  
PORTERVILLE, CA 93258  
ATTN: G. Hawley

DEVELOPMENT FEE PAYMENT PLAN AGREEMENT NO. \_\_\_\_

Pursuant to Resolution No. \_\_\_\_ of the City of Porterville, \_\_\_\_\_, owner of real property located at \_\_\_\_\_, Porterville, Tulare County, California, legally described as:

See Attachment

agrees to pay the City of Porterville the amount of \$\_\_\_\_\_ at the rate of \$\_\_\_\_\_, or more, per year for four years from the date hereof and a final, fifth year payment of \$\_\_\_\_\_. The first of said payments shall be due prior to occupancy of the facility, on or about the \_\_\_\_ day of \_\_\_\_\_, 2001, and subsequent payment shall be made on the \_\_\_\_ day of \_\_\_\_\_ of each year thereafter until the principal has been paid in full. The principal sum due is for (Specify applicable permit and development fees) \_\_\_\_\_ for the property located at \_\_\_\_\_.

In the event the undersigned sells or otherwise transfer 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. 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 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 \_\_\_\_\_, 2001.

Signed

PROPERTY OWNERS:

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

APPROVED AS TO FORM:

FOR THE CITY OF PORTERVILLE:

\_\_\_\_\_  
Thomas Watson  
City Attorney

\_\_\_\_\_  
Gordon T. Woods, Mayor

\_\_\_\_\_  
C. G. Huffaker, City Clerk

STATE OF CALIFORNIA)  
(SS  
COUNTY OF TULARE )

I, C. G. HUFFAKER, 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 a resolution duly and regularly passed and adopted by the Council of the City of Porterville at a regular meeting of the Porterville City Council regularly called and held on the 5th day of June, 2001.

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

Councilmen:	WEST	WILSON	GURROLA	McGUIRE	WOODS
AYES:	X		X	X	X
NOES:					
ABSENT:		X			
ABSTAIN:					

C. G. HUFFAKER, City Clerk

By Georgia Hawley  
Georgia Hawley, Deputy City Clerk

**RECORDING REQUESTED BY:**

**City of Porterville**

**WHEN RECORDED MAIL TO:**

**City of Porterville  
291 North Main Street  
Porterville, CA 93257**

**CITY OF PORTERVILLE  
DEVELOPMENT FEE PAYMENT PLAN**

**DEED OF TRUST  
AGREEMENT/LOAN NUMBER \_\_\_\_\_**

THIS DEED OF TRUST is made this \_\_\_\_ day of \_\_\_\_\_, 2014, among Porterville Henderson Association, a \_\_\_\_\_, herein called Trustor, whose address is \_\_\_\_\_, and \_\_\_\_\_ Title Company, herein called Trustee, and the City of Porterville, a political subdivision of the State of California, herein called Beneficiary.

WITNESSETH: that Trustor hereby grants, transfers and assigns to Trustee, its successors and assigns, in trust, with power of sale, the interest in that Development in the City of Porterville, County of Tulare, State of California, described as:

[Legal Description is attached hereto and incorporated herein by this reference as Exhibit A and referred to herein as the "Development"]

TOGETHER WITH all and singular the tenements, hereditaments, rights, rights of way, easements, privileges and appurtenances thereunto belonging, or in any way appertaining (all as part of the Development hereby conveyed) which shall be deemed to include, but not to be limited to, (i) all rents, issues, profits, royalties and revenue therefrom, subject, however, to any right, power and authority hereinafter given to and conferred upon Beneficiary to collect the same; (ii) all improvements and fixtures (whether or not annexed thereto) now or hereafter used in connection therewith.

**FOR THE PURPOSE OF SECURING:**

ONE: Payment of the indebtedness evidenced by a Note secured by this Deed of Trust (and any renewals or extensions or modifications thereof) (the "Note"), of even date herewith, in the principal sum of One Million Two Hundred and Forty-Eight Thousand, Eight Hundred and Sixty-Nine Dollars and Eighteen Cents (\$1,248,869.18), the final payment on which is due as described in the Note, executed by Trustor and delivered to Beneficiary, together with the

interest thereon and late charges as provided by the Note which is made a part hereof by reference.

TWO: Payment of further advances, and interest thereon, which may be made by Beneficiary as provided by paragraph 19 hereof.

THREE: Payment of all other moneys herein agreed or provided to be paid by Trustor.

FOUR: Performance of each agreement of Trustor herein contained or incorporated herein by reference, particularly that certain agreement entitled, "Development Fee Payment Plan" (the "Agreement"), of which is on file at the offices of the Beneficiary, which is located at 291 North Main Street, Porterville, California 93257.

FIVE: The parties hereto specifically acknowledge that the Development is the subject of, or will be the subject of, a construction deed of trust in an amount not to exceed seventeen million dollars (\$17,000,000.00), to which Beneficiary and Trustee have consented and for which Beneficiary's lien shall be subordinated. It is further acknowledged that said construction loan shall be paid off and the lien it represents shall be released from the Development upon the completion of the construction and stabilization of the Development; however, the Development will then be subject to a lien in an amount not to exceed \_\_\_\_\_ (\$ \_\_\_\_\_), for which the maximum interest rate will not exceed 10%, to which Beneficiary and Trustee have consented and for which Beneficiary's lien shall be subordinated such that Beneficiary's lien shall be in second position on the Development, behind either the construction loan or the long-term "take out" loan, but never behind two loans at the same time.

#### TRUSTOR AGREES:

1. To pay: (a) ten (10) days before delinquent, all taxes and assessments of every type or nature affecting said Development; (b) all other charges and encumbrances which now are or shall hereafter be or appear to be a lien prior to the lien of this Deed of Trust, when due and in accordance with their terms.
2. To keep the Development insured against loss or damage by fire, the perils against which insurance is afforded by the Extended Coverage Endorsement. The policy of such insurance shall be in the form in general use from time to time in the State of California, shall be in an amount not less than the indebtedness from time to time secured hereby and by any senior encumbrances, shall be issued by a company or companies rated A XII or better in Best's Insurance Guide, and shall contain the Standard Mortgagee Clause with loss payable to Beneficiary. Trustor shall provide Beneficiary with a certificate evidencing such insurance from the issuing company. Such policy or policies shall provide that they will not be canceled without thirty (30) days prior written notice to Beneficiary. Whenever required by Beneficiary in writing mailed to Trustor at Trustor's last address known to Beneficiary, copies of such policies shall be delivered immediately to Beneficiary. Any and all amounts received by Beneficiary under any of such policies shall be applied in accordance with paragraph 27 of this Deed of Trust.



3. To keep the Development in good condition and repair, and not to commit or permit waste thereof; not to remove or demolish, nor impair the structural character or integrity of any building, fixture, equipment, fence, canal, well or other improvement now or hereafter situated upon the Property, without the prior written consent of Beneficiary (which shall not be unreasonably withheld or delayed); to complete or restore promptly and in good and workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon and to pay when due all claims for work, labor or services performed and materials furnished therefore; to comply with all laws affecting said Development or requiring any alterations or improvements to be made.
4. Not to discriminate upon the basis of sex, marital status, race, color, creed, religion, national origin, or ancestry in the sale, lease, sublease, transfer or rental, or in the use, occupancy, tenure or enjoyment of the Development or any improvements thereon, or of any part thereof. Nor shall the Trustor or anyone claiming under or through the Trustor, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenancy, lessees, subtenants, sublessees, or vendees in the Development. Each and every deed, lease, and contract entered into with respect to the Development shall be subject to nondiscrimination or nonsegregation clauses identical to those set forth in Section 33436 of the California Health and Safety Code.
5. That if, during the existence of these trusts, there be commenced or pending any action or proceeding affecting said Development, or the title thereto, or if any adverse claim for or against the said Development be made, and if Trustor fails to do so or is otherwise in default hereunder, Trustee or Beneficiary, or both, may appear in said action or proceeding and retain counsel therein and defend the same, or otherwise take such action therein as they or either of them may deem advisable, and may settle or compromise the same or the said adverse claim; and in that behalf, and for any of the said purposes, may pay and expend such sums of money as they, or either of them, may deem to be reasonable and necessary.
6. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said Development, and not to suffer or permit any act to be done in or upon said Development in violation thereof, including, as applicable, but not limited to, Sections 92.252 and 92.254 of the Code of Federal Regulations Title 24 (24 DFR Part 92).
7. That, if Trustor fails to do so, Beneficiary without demand or notice and as in its sole judgment it may consider necessary, may do any or all things required of Trustor by any of the provisions herein contained and incur and pay all reasonable and necessary expenses in connection therewith.
8. To pay to Trustee and Beneficiary, respectively, promptly and within thirty (30) days of receipt of written demand, the amounts of all sums of money which they shall respectively pay pursuant to any of the provisions herein contained, including, but not limited, to reasonable attorney fees and the cost of evidence of title or any guarantee

thereof, together with interest upon each of said amounts, until repaid, from the time of the payment thereof, at the rate of ten percent (10%) per annum.

9. That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any material agreement hereunder after any applicable cure periods, Beneficiary may deliver a written Notice of Default (as set forth in the Agreement) and of election to cause said Development to be sold, which notice Trustee shall cause to be filed for record, and Beneficiary may also declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default. After the lapse of such time as may then be required by law following the recordation of said Notice of Default, and Notice of Sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Development at the time and place fixed by it in said Notice of Sale, either as a whole or in separate parcels, and in such order as Beneficiary may determine, subject to any statutory right which Trustor may have to direct such order, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Development by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Development so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at ten percent (10%) per annum; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.
10. That all of the rents, issues and profits of said Development are hereby assigned to Beneficiary as further security for the payment of the indebtedness and performance of the obligations, covenants, promises and agreements secured hereby. Provided, and only for so long as, Trustor is not in default hereunder, Beneficiary hereby authorizes Trustor or Trustor's agents to collect the aforesaid rents and revenues. In case default be made in payment of any indebtedness secured hereby or in performance of any of Trustor's material agreements herein contained, Beneficiary shall be entitled at any time without notice, in its sole discretion, either by their agents attorneys, employees, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, to enter upon and take possession of the above Development or any part thereof, and to do and perform any acts that Beneficiary may deem necessary or proper to conserve the value thereof, and to collect and receive all rents, issues and profits thereof, including those past due and agrees that Beneficiary may also take possession of, and use, any and all personal property contained in said Development and used by Trustor in the rental or leasing of said Development or any part thereof. Beneficiary may apply all such rents, issues and profits collected or received by it in the manner hereinabove specified in respect of proceeds of sale of said Development, or any part of all of such

moneys may be released by Beneficiary at its sole option. The expense (including receivers' fees, if any, and compensation to any agent appointed by Beneficiary, and reasonable counsel fees and costs and disbursements) incurred in taking possession and effect collection, shall be deemed a portion of the expense of this trust to be paid by Trustor and secured hereby. Neither the entering upon and taking possession of the said Development nor the collection of such rents, issues and profits and the application or release thereof as aforesaid, shall cure or waive any default or Notice of Default hereunder or invalidate any act done pursuant to such Notice.

11. That all judgments, awards of damages and settlements, in excess of \$200,000, hereafter made as a result of or in lieu of any condemnation or other proceedings for public use of, or for any damage to, said Development or the improvements and any award for change of grade of streets thereon are hereby assigned and shall be paid to Beneficiary. Trustor agrees to execute such further assignments of any such award, judgment or settlement in excess of \$200,000 as Beneficiary may require, and to deliver to Beneficiary all proceeds of any such award, judgment or settlement which may be received by Trustor. Beneficiary shall apply any and all such sums in accordance with paragraph 28 of this Deed of Trust.
12. Without affecting the liability of Trustor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Beneficiary with respect to any security not expressly released in writing, Beneficiary may, at any time and from time to time, either before or after the maturity of the Note, and without notice or consent:
  - a. Release any person liable for payment of all or any part of the indebtedness, or for performance of any obligation;
  - b. Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof;
  - c. Exercise or refrain from exercising or waive any right Beneficiary may have;
  - d. Accept additional security of any kind;
  - e. Release or otherwise deal with any Development, real or personal, securing the indebtedness, including all or any part of the Development herein described.
13. That if the indebtedness secured hereby is now or hereafter further secured by chattel mortgages, security interest deeds of trust, pledges, contracts of guaranty or other additional securities, Beneficiary may, at its option, exhaust any one or more of said securities as well as the security hereunder, either concurrently or independently and in such order as it may determine, and may apply the proceeds received upon the indebtedness secured hereby without affecting the status of, or waiving any right to

exhaust all or any other security including the security hereunder and without waiving any breach or default of any right or power, whether exercised hereunder or contained herein, or in any such other security.

14. This Deed of Trust shall not be construed to create a security interest under the provisions of the Uniform Commercial Code, as same together with any amendments or supplements thereto may be in effect, with respect to any goods, equipment, appliances, bank accounts, account receivables, inventory or articles of personal property now attached to or used or hereafter to be attached to or used in connection with the Development.
15. That acceptance by Beneficiary of any sum in payment, or part payment, of any indebtedness secured hereby, after the same is due or after the recording of a Notice of Default, shall not constitute a waiver of the right to require prompt payment, when due, of all other sums so secured, nor shall such acceptance cure or waive any remaining default or invalidate any sale held pursuant to such Notice for any such remaining default, or prejudice any of the rights of Beneficiary under this Deed of Trust.
16. That Beneficiary may, at any time Beneficiary may desire, appoint another Trustee in the place and stead of said Trustee or any successor in trust, and the title herein conveyed to said Trustee shall be vested in said successor, which appointment shall be in writing and shall be duly recorded in the Recorder's Office of the County in which the above-described land is situated.
17. That the trusts herein created are irrevocable.
18. That default under the terms of any instrument evidencing any debt secured by an encumbrance senior or prior to this instrument shall, after the expiration of any applicable cure periods, constitute a default hereunder.
19. That upon the request of Trustor or Trustor's successors in ownership of the land, Beneficiary may hereafter, at its option, at any time before full payment of the indebtedness secured hereby, make further advances to Trustor or said successors in ownership, and the same, with interest and late charges, if any, shall be secured by this Deed of Trust; provided, however, that the amount of principal secured by this Deed of Trust and remaining unpaid, shall not at the time of and including any such advance exceed the original principal sum secured hereby; and provided further that if Beneficiary, at its option, shall make a further advance or advances as aforesaid, Trustor or said successors in ownership agree to execute and deliver to Beneficiary a note to evidence the same, payable on or before that maturity of the indebtedness secured hereby and bearing such other terms as Beneficiary shall require.
20. That default in the terms of any other instrument securing the debt secured hereby shall, after expiration of any applicable cure periods, constitute a default in this Deed of Trust.

21. That the invalidity of any one or more covenants, phrases, clauses, sentences or paragraphs of this Deed of Trust shall not affect the remaining portions of this Deed of Trust or any part thereof and this Deed of Trust shall be construed as if such invalid covenants, phrases, clauses, sentences or paragraphs, if any, had not been inserted herein.
22. Trustor agrees to pay Beneficiary's charges for the preparation of any financial or loan statements regarding the obligations secured by this Deed of Trust requested by Trustor or in his behalf.
23. ~~If the Development is income property, Trustor shall deliver to Beneficiary Trustor's signed copy of all leases, or executed counterparts thereof, now existing or hereafter made affecting all or any part of the Development. Trustor shall not, without Beneficiary's written consent (which shall not be unreasonably withheld or delayed), permit an assignment of any lease or request or consent to the subordination of any lease of all or any part of the Development to any lien subordinate to this Deed of Trust. If Trustor becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Trustor shall, subject to any limitations in §42 of the Revenue and Taxation Code, if applicable: (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, and (ii) take such steps as shall effectively discharge such set-off and as shall effectively assure that rents thereafter due shall continue to be payable without set-off or deduction. Upon Beneficiary's taking possession of the Development by receiver or otherwise, Trustor shall be deemed to have assigned to Beneficiary all leases now existing or hereafter made of all or any part of the Development and all leases now existing or hereafter made of all or any part of the Development and all security deposits made by tenants in connection with such leases now existing or hereafter made by tenants in connection with such leases of the Development for so long as Beneficiary remains in possession; thereupon, Beneficiary shall have all of the rights and powers possessed by Trustor prior thereto and Beneficiary shall have the right to modify, extend or terminate such existing leases and to execute new leases, in Beneficiary's reasonable determination.~~
24. If Trustor shall voluntarily file a petition under the Federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar to successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Trustor shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Trustor within sixty (60) days from the date when such proceedings are brought, or if Trustor shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Trustor or Trustor's Development, or if the Development shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Trustor shall make an assignment for the benefit of Trustor's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Trustor's assets and such seizure is not discharged within thirty (30) days, then Beneficiary may, at Beneficiary's option, declare all of the sums secured by this

Deed of Trust to be immediately due and payable without prior notice to Trustor, and Beneficiary may invoke any remedies permitted by this Deed of Trust. Any reasonable attorney fees and other reasonable expenses incurred by Beneficiary in connection with Trustor's bankruptcy or any of the other aforesaid events shall be additional indebtedness of Trustor secured by this Deed of Trust.

25. Should Trustor sell, convey, transfer or dispose of the Development, or any part thereof, or any interest therein, or place any lien or encumbrance thereon subordinate to the lien created hereby, or agree to do so (whether voluntarily or any operation of law), without the written consent of Beneficiary being first obtained, except as permitted in the Agreement, Beneficiary shall have the right, at its option, to declare all sums secured hereby forthwith due and payable. This option may be exercised at any time after the occurrence of such event and the acceptance of one or more installments from any person thereafter shall not constitute a waiver of Beneficiary's option. Consent to one such transaction shall not be deemed to be a waiver of the right to require such consent to future or successive transactions. ~~Notwithstanding anything to the contrary hereinabove, the respective interests of the Borrower's special limited partner and the Borrower's investor limited partner shall be transferable without the consent of the City. Moreover, the special limited partner of Borrower shall be permitted to remove the general partner thereof for cause in accordance with the terms of Borrower's partnership agreement. Moreover, if any limited partner of Borrower exercises its right to remove the general partner thereof, the City shall not unreasonably withhold its consent to the substitute general partner.~~

26. Notwithstanding the existence of any other security interest(s) in the Development held by Beneficiary or by any other party, Beneficiary shall have the right to determine the order in which any or all of the Development shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Trustor, any party who consents to this Deed of Trust and any party who now or hereafter acquires a security interest in the Development and who has actual or constructive notice hereof, hereby waives any and all rights to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

27. Casualty:

a. Definitions. For purposes of this paragraph 27, the following terms and phrases shall have the meanings indicated:

(i) "Restoration" means the restoration, repair, replacement or rebuilding of the Development and/or the improvements, if any, to a value, condition and character equal to or greater than that immediately prior to the damage, destruction or "Taking," as defined below.

- (ii) “Taking” means the taking of all or any part of the Development and/or the improvements, if any, or any interest therein or right accruing thereto, as the result of the exercise of the right of condemnation or eminent domain, or change of grade effecting the Development or the improvement, if any, or any part thereof. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking.
- b. Repair. In case of any damage to the Development or any part thereof, if the reasonable cost of Restoration (any temporary repairs and Development protection pending commencement of the Restoration) exceeds \$200,000, Trustor will promptly give written notice of such damage to Beneficiary, describing the nature and extent of such damage and setting forth the best estimate of the cost of Restoration (and such temporary repairs and Development protection). In case of any damage to the Development or any part thereof, Trustor at its expense shall promptly commence and complete the Restoration provided that the Net Casualty Insurance Proceeds (defined below) are made available to Trustor. All insurance proceeds on account of any damage to the Development shall be payable to, and deposited with, Beneficiary. Subject to the conditions set forth below, Beneficiary shall request from Trustor the estimate of cost of restoration which restoration shall be accomplished by the Trustor if Beneficiary receives satisfactory guarantees from Trustor that when combined with the insurance proceeds held by Beneficiary, the restoration can be accomplished such that the value of Beneficiary’s lien is not impaired. If restoration as provided hereinable is not determined by Beneficiary to be available due to insufficient funds and/or lack of adequate guaranties and prompt action by the Trustor, Beneficiary, at its sole option, (i) may apply such insurance proceeds upon the Note, as the Beneficiary may determine, (ii) may release such insurance proceeds, without reducing the principal balance of the Note to Trustor, or (iii) any such amount may be divided in any manner among any such application use of release. No such application, use or release shall, however, cure or waive any default of Notice of Default under the Agreement or invalidate any act done pursuant to such Notice. Any unapplied, undisbursed insurance proceeds remaining with the Beneficiary shall inure to the benefit of and pass to the owner or purchaser or the Development or any part of it at any foreclosure or trustee’s sale under the Agreement.
- c. Application. In the event that Trustor requests that the insurance proceeds be used to accomplish the Restoration, then any “Net Casualty Insurance Proceeds” (i.e., the casualty insurance proceeds remaining after reimbursement of the Beneficiary for any reasonable costs and expenses of the Beneficiary, including reasonable attorney’s fees, for collection thereof) received by the Beneficiary shall be applied to the cost of Restoration and disbursed in the same manner and subject to the same conditions as the Project Funds (as defined in the Agreement) but only if each of the following

conditions is satisfied: (A) no default or potential default exists hereunder; (B) the Net Casualty Insurance Proceeds, together with such additional funds (the "Required Equity Funds") as Trustor shall have deposited with the Beneficiary (and which the Trustor shall be required to deposit with the Beneficiary within one hundred twenty [120] days after the occurrence of such casualty), are sufficient, in the reasonable judgment of the Beneficiary, to pay all costs of (1) the Restoration and (2) interest under the Note and any other expenses related to the Development; (C) the anticipated date for completion of Restoration shall, in the reasonable judgment of the Beneficiary, be prior to the date which is six (6) months prior to the then-applicable maturity date of the Note; and (D) each of the insurance companies from which the Net Casualty Insurance Proceeds are received shall have waived in writing all right of subrogation for the benefit of Trustor and the Beneficiary. Notwithstanding the foregoing, so long as the value of Beneficiary's lien is unimpaired, the Net Casualty Proceeds shall be used for Restoration. Notwithstanding the foregoing, this section 27(c) shall be subject to the terms of the Subordination Agreement.

28. Condemnation. Subject to the terms of the Subordination Agreement, in the event of a partial Taking such that the Development is subject to Restoration, all proceeds and awards shall be paid to Beneficiary to accomplish the Restoration in the event that Trustor requests and satisfies the conditions for the same; and such amount shall be disbursed as set forth in subparagraph 27c (as the same applies to the application of the Net Casualty Insurance Proceeds, with each reference therein to insurance proceeds deemed to include a reference to condemnation proceeds and awards). In the event of a total Taking or in the event Borrower does not elect to apply such award or proceeds to the Restoration, such amount shall be applied as follows, in the order of priority indicated:

- a. To reimburse Beneficiary for all reasonable costs and expenses, including reasonable attorneys' fees, incurred in connection with collecting such proceeds;
- b. To the Payment of the accrued and unpaid interest on the Note;
- c. To the payment of the unpaid principal of the Note; and
- d. Any remaining balance, if any, shall be paid to the Trustor.

Notwithstanding anything to the contrary herein, any cure of any default or Event of Default made or tendered by the Limited Partner of Borrower (or an affiliate thereof) shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

29. Subordination Agreement. In the event that there are any conflicts in this Deed of Trust and the Subordination Agreement, the terms of the Subordination Agreement shall prevail.



UPON WRITTEN REQUEST OF BENEFICIARY stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of its fees, Trustee shall reconvey, without warranty, the estate in the Development then held by Trustee. The grantee in such reconveyance may be designated and described as the "person or persons legally entitled thereto," or by other appropriate terms.

This Deed of Trust shall inure to and bind the heirs, legatees, devisees, administrators, executors, successors and assigns of the parties hereto, and shall be so construed that wherever applicable with reference to any of the parties hereto, the use of the singular number shall include the plural number, the use of the plural number shall include the singular number, the use of the masculine gender shall include the feminine gender, and shall likewise be so construed as applicable to and including a corporation or corporations that may be a party or parties hereto. The term Beneficiary shall mean the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein.

TRUSTOR hereby requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

Signature of Trustor:

Porterville Henderson Association, a \_\_\_\_\_

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )

COUNTY OF TULARE )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, in his capacity as \_\_\_\_\_ of Porterville Henderson Association, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person that executed this instrument.

WITNESS my hand and official seal.

\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )

COUNTY OF TULARE )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ in his capacity as \_\_\_\_\_ of \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person that executed this instrument.

WITNESS my hand and official seal.

\_\_\_\_\_

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. \_\_\_\_\_**

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 \_\_\_\_\_ (at the time the project permits are issued), and subsequent payment shall be made on the \_\_\_\_\_ day of \_\_\_\_\_ 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 *may* 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

\_\_\_\_\_

APPROVED AS TO FORM:

FOR THE CITY OF PORTERVILLE:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Cameron J. Hamilton, Mayor

\_\_\_\_\_  
John D. Lollis, City Clerk

EXHIBIT A

Recording requested by & ]  
when recorded mail to: ]  
]
  
City of Porterville ]  
291 North Main Street ]  
Porterville, CA 93257 ]  
Visalia, CA 93291 ]  
]
  
MAIL TAX STATEMENT TO: ]  
]
  
]
  
]
  
]
  
]

Space above this lien for recorder's use

**SUBORDINATION AGREEMENT**

STATE OF CALIFORNIA )  
:SS.  
COUNTY OF TULARE )

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.**

THIS SUBORDINATION AGREEMENT is made between \_\_\_\_\_, hereafter called "Trustor" and City of Porterville, hereafter called "Beneficiary."

WHEREAS, Trustor executed a Development Fee Payment Plan Deed of Trust for Agreement/Loan No. \_\_\_\_\_, dated \_\_\_\_\_, in favor of Beneficiary, which was recorded on \_\_\_\_\_, as Instrument No. \_\_\_\_ in Book \_\_\_\_, Page \_\_\_\_, Official Records of \_\_\_\_\_ County, California, hereafter called the "Subordinate Deed of Trust";

WHEREAS, the Subordinate Deed of Trust was secured for the amount due of \$1,248,696.18 executed on \_\_\_\_\_ by Trustor in favor of Beneficiary;

WHEREAS, Trustor is the owner of the real property subject to the Subordinate Deed of Trust, hereafter called "Real Property," which is located in the City of Porterville, County of Tulare, California, and is more particularly described as follows:

*[insert legal description];*

WHEREAS, Trustor desires to obtain a loan, hereafter referred to as the

**ATTACHMENT  
ITEM NO. 4**

“Construction Loan,” in the amount of \$16,110,300.00 from United Security Bank, hereafter referred to as “Lender,” and has executed or shall execute concurrently with this Subordinate Deed of Trust a note for the amount of the Construction Loan and a deed of trust in favor of Lender, hereafter referred to as the “Superior Deed of Trust,” securing and evidencing the Construction Loan; and

WHEREAS, Lender is willing to make the Construction Loan provided the deed of trust securing it (the Superior Deed of Trust) is a lien or charge on the Real Property prior and superior to the lien or charge of the Subordinate Deed of Trust, and provided further that Beneficiary specifically and unconditionally subordinates the lien or charge of the Subordinate Deed of Trust to the Superior Deed of Trust; and

WHEREAS, it is mutually beneficial to Beneficiary and Trustor that Lender make the Construction Loan to Trustor, and Beneficiary is willing to subordinate the lien of the Subordinate Deed of Trust, insofar as it encumbers the Real Property, to the Superior Deed of Trust in order that Trustor may obtain the Construction Loan from Lender;

NOW, THEREFORE, the parties to this instrument agree as follows:

#### **Terms of Subordinating Loan**

1. The terms of the Construction Loan from Lender to Trustor are as follows:

(a) The total amount of the construction loan is \$16,110,300.00, which is \_\_\_ percent of the anticipated value of the property after completion of the improvements for which the loan is being obtained, as determined by Lender.

(b) Any funds derived from the construction loan shall be used only for the construction of improvements on the property that it encumbers. Construction of improvements shall mean and be construed pursuant to the terms of the subordinating loan documents.

(c) No portion of the construction loan shall be used to pay loan fees, interest, or other charges not directly connected with the construction of improvements on the property encumbered by the construction loan.

(d) The maximum loan fees, interest, or other loan charges that may be deducted from the principal amount of the construction loan are as follows:

- (i) Loan fees: 1% percent of the principal amount of the construction loan; 0.5% for permanent financing.
- (ii) Maximum Interest: 5.25% percent per annum for the construction loan.
- (iii) Other loan charges: none.

(e) The construction loan bears interest, exclusive of late charges, penalties, or fees payable in case of default, at the rate of 5.25% percent per annum.

(f) The construction loan is payable in monthly installments of ~~principal and~~ interest over a period of time not less than 36 months or more than 10 years from the date of the construction loan, with the total unpaid balance all due and payable at the end of that period.

(g) Additional payments may be made, without penalty, on the principal and accrued interest of the construction loan at any time before maturity.

(h) The total payment of principal and interest due on the construction loan is \$\_\_\_\_\_ per month.

(i) The proceeds of the construction loan must be disbursed by the Lender either through its own offices or through a bonded disbursement control agency only after inspection of the work completed on the property and presentation of vouchers signed by the Trustor or his or her successors in interest for the cost of work, labor, or materials actually performed or used in the construction of the improvements on the property.

(j) At the end of the initial term of 36 months, said loan shall be modified as follows: extension of maturity date to 7 years; change the repayment schedule from interest monthly, interest and principal at maturity to interest and principal monthly, based on a 30-year amortization, interest and principal at maturity; and paid in 83 regular payments and one irregular payment, terms to be further defined at the time of modification.

Beneficiary hereby approves all the terms of the loan.

### **Subordination**

2. Beneficiary hereby subordinates the Subordinate Deed of Trust to the Superior Deed of Trust, which shall be recorded in the Office of the County Recorder of Tulare County, California. Beneficiary further declares that the lien of the Superior Deed of Trust shall be and is in all respects prior and superior to the lien of the Subordinate Deed of Trust and that the Superior Deed of Trust and any renewals or extensions of the Superior Deed of Trust and the note secured by it shall be and remain at all times a lien or charge on the Real Property, prior and superior to the lien or charge of the Subordinate Deed of Trust. To the extent allowed by applicable law, in the event Trustor refinances above-described construction loan/permanent financing, and the refinancing results in equal or better terms (e.g. lower interest rate for the same term or less owed overall), Beneficiary agrees that its Subordination extends to said refinancing.

### **Acknowledgment of Subordination**

3. Beneficiary acknowledges that it hereby intentionally waives, relinquishes, and subordinates the priority and superiority of the lien or charge of the Subordinate Deed of



Trust in favor of the lien or charge of the Superior Deed of Trust, and that it understands that in reliance on and in consideration of this waiver, relinquishment, and subordination specific loans and advances are being and will be made, and that specific monetary and other obligations are being and will be entered into by third parties, that would not be made or entered into but for that reliance on the waiver, relinquishment, and subordination. Beneficiary further acknowledges that an endorsement has been placed on the note secured by the Subordinate Deed of Trust and that the Subordinate Deed of Trust has by this instrument been subordinated to the lien or charge of the Superior Deed of Trust.

**Entire Agreement**

4. This agreement contains the whole agreement between the parties relating to the deeds of trust loans, and the priority of those loans. There are no agreements, written or oral, outside or separate from this agreement, and all prior negotiations, if any, are merged into this agreement.

**Binding Effect**

6. This Subordination Agreement shall inure to the benefit of Lender, its legal representatives, successors, and assigns, and shall be binding on Beneficiary and Trustor, their respective heirs, legal representatives, successors, and assigns.

Dated: \_\_\_\_\_

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT ON THE LAND.**

BENEFICIARY

\_\_\_\_\_  
Cameron J. Hamilton, Mayor  
City of Porterville

TRUSTOR

\_\_\_\_\_  
Name

