



336 Pacific Avenue, Shafter, CA 93263
Meeting Held In-Person and Via Zoom and Livestream on YouTube.

**AGENDA
REGULAR MEETING
SHAFTER PLANNING COMMISSION
TUESDAY, OCTOBER 10, 2023**

NOTICE TO THE PUBLIC:

Any documents produced by the City and distributed to a majority of the Planning Commission regarding any item on this agenda will be made available in the City Clerk's Office during normal business hours at City Hall located at 336 Pacific Avenue, Shafter CA. In addition, such documents will be posted on the City's website at www.shafter.com.

CALL TO ORDER:	6:00 PM
PLEDGE OF ALLEGIANCE:	Vice Chairman Frantz
INVOCATION:	Commissioner Wiebe
ROLL CALL:	Chairman Sanchez Vice Chairman Frantz Commissioner Joshan Commissioner Piuser Commissioner Wiebe

APPROVAL OF AGENDA:

PUBLIC COMMENT:

This portion of the meeting is reserved for persons wanting to address the Commission only on matters not listed on this agenda. Speakers are limited to five minutes unless additional time is needed for translation. Please state your name and address for the record before making your presentation.

MINUTES OF PREVIOUS MEETING:

1. Approval of Minutes: July 11, 2023.

PUBLIC HEARING:

Should anyone challenge any proposed action which is the subject of a public hearing listed on this agenda, that person challenging any action taken after the public hearing

may be limited to raising only those issues addressed at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at or prior to this public hearing.

- 1. Amendment No. 1 to Development Agreement No. 21-20 for Tentative Tract No. 6490:** Planning Commission conduct a public hearing; and adopt Resolution No. 23-429, a Resolution of the Planning Commission of the City of Shafter, recommending the City Council approve and adopt execution of a first amendment to Development Agreement No. 21-20 for Tentative Tract No. 6490. (Planning Director Esselman)

ROLL CALL

COMMISSIONER REPORTS:

ADJOURNMENT:

Pursuant to the Americans with Disabilities Act, if you need special assistance to participate in a City Council Meeting, please contact the City Clerk at (661) 746-5000 at least three (3) days prior to the meeting or time the special services are needed to allow City staff in making reasonable arrangements to provide you with access to the meeting. Any public record, relating to an open session agenda item, that is distributed within 72 hours prior to the meeting is available for public inspection in the City Clerk's Office at Shafter City Hall, 336 Pacific Ave., Shafter, CA 93263. This is to certify that this Agenda notice was posted at City Hall and Police Dept. by 5:00 p.m., October 5, 2023. Yazmina Pallares, S/S, City Clerk

REMOTE PUBLIC PARTICIPATION IS ALLOWED IN THE FOLLOWING WAYS, SEE BELOW FOR INSTRUCTIONS.

1. You are strongly encouraged to observe the Planning Commission meetings live via YouTube <https://www.youtube.com/user/CityofShafter/>
2. If you wish to make a comment on a specific agenda item or public comment, please submit your comment via email by **6:00 PM on October 10, 2023** to the City Clerk at CityClerk@shafter.com
3. If you wish to make a written comment to the City Clerk, 336 Pacific Avenue, Shafter, CA 93263.
4. If you wish to make a comment during the live meeting, callers must first register with the City Clerk at 661-746-5012 before the meeting begins to receive instructions and the call- in number and code. Please call by 5:00pm on the Monday prior to the Planning Commission meeting to allow ample time for sign up. You will need to provide your name, phone number and the item number you wish to address.
5. All public comments are provided to the Planning Commission and applicable Staff, for review and consideration by the Board prior to taking action on any matters listed on the agenda and are incorporated into the official record of the Planning Commission meeting.

**MINUTES OF THE REGULAR MEETING OF THE
SHAFTER PLANNING COMMISSION
COUNCIL CHAMBER, 336 PACIFIC AVENUE
MEETING HELD IN-PERSON AND VIA ZOOM AND LIVESTREAM TO YOUTUBE
TUESDAY, JULY 11, 2023**

CALL TO ORDER: 6:00 PM

PLEDGE OF ALLEGIANCE: Vice Chairman Frantz

INVOCATION: Commissioner Piuser

ROLL CALL:

PRESENT(In-Person): Chairman Sanchez, Vice Chairman Frantz, Commissioners Joshan, and Piuser. Absent with an excused absence: Commissioner Wiebe. Also present: Planning Director Esselman, IT Specialist Herrera, and Deputy City Clerk Uribe.

APPROVAL OF AGENDA:

*MOVED (FRANTZ) AND SECONDED (PIUSER) COMMISSIONERS APPROVED THE AGENDA AS PRESENTED.
MOTION CARRIED BY THE FOLLOWING VOTE:*

AYES: FRANTZ, JOSHAN, PIUSER, AND SANCHEZ.

NAYS: NONE.

ABSENT: WIEBE.

ABSTENTIONS: NONE.

MINUTES OF PREVIOUS MEETING:

1. Approval of Minutes: Regular Meeting of May 9, 2023.

MOVED (FRANTZ) AND SECONDED (JOSHAN) COMMISSIONERS APPROVED THE MINUTES OF THE REGULAR MEETING OF MAY 9, 2023 AS PRESENTED. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES: FRANTZ, JOSHAN, PIUSER, AND SANCHEZ.

NAYS: NONE.

ABSENT: WIEBE.

ABSTENTIONS: NONE.

PUBLIC COMMENT:

There were no members of the public wishing to speak.

PUBLIC HEARING:

Should anyone challenge any proposed action which is the subject of a public hearing listed on this agenda, that person challenging any action taken after the public hearing may be limited to raising only those issues addressed at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at or prior to this public hearing.

1. **Conditional Use Permit No. 22-130:** Planning Director Esselman made introductory

comments. A notice of public hearing was properly advertised.

Chairman Sanchez opened the public hearing.

Philip Jimenez, District Manager with the Shafter Recreation and Park District, answered any questions the Commission had.

Being no other members of the public wishing to speak, the public hearing was closed.

MOVED (PIUSER) AND SECONDED (JOSHAN) COMMISSIONERS CONDUCTED A PUBLIC HEARING; AND ADOPTED RESOLUTION NO. 23-427, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SHAFTER APPROVING CONDITIONAL USE PERMIT NO. 22-130 TO ALLOW FOR LIGHT POLES RANGING FROM 50 TO 80 FEET THROUGHOUT THE FUTURE SHAFTER COMMUNITY PARK LOCATED AT THE NORTHWEST CORNER OF E. ASH AVENUE AND GOLDS AVENUE. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES: FRANTZ, JOSHAN, PIUSER, AND SANCHEZ.

NAYS: NONE.

ABSENT: WIEBE.

ABSTENTIONS: NONE.

2. Temporary Land Use Permit No. 23-136: Planning Director Esselman made introductory comments. A notice of public hearing was properly advertised.

Chairman Sanchez opened the public hearing.

Being no members of the public wishing to speak, the public hearing was closed.

MOVED (FRANTZ) AND SECONDED (PIUSER) COMMISSIONERS CONDUCTED A PUBLIC HEARING; AND ADOPTED RESOLUTION NO. 23-428, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SHAFTER APPROVING TEMPORARY LAND USE PERMIT NO. 23- 136 FOR BAKED POTATO AND ROASTED CORN SALES IN THE APPLE MARKET PARKING LOT AT 111 N. CENTRAL VALLEY HIGHWAY, CITY OF SHAFTER. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES: FRANTZ, JOSHAN, PIUSER, AND SANCHEZ.

NAYS: NONE.

ABSENT: WIEBE.

ABSTENTIONS: NONE.

COMMISSIONER REPORTS: There were no Commissioner Reports.

ADJOURNMENT:

MOVED (FRANTZ) AND SECONDED (PIUSER) COMMISSIONERS ADJOURNED THE MEETING AT 6:21 P.M. MOTION CARRIED WITH NO OPPOSITION WITH COMMISSIONER WIEBE ABSENT.

John Sanchez, Chairman

ATTEST:

Vanessa Uribe, Deputy City Clerk

DATE: October 10, 2023
TO: Planning Commission
FROM: Planning Department
SUBJECT: Amendment No. 1 to Development Agreement No. 21-20 for Tentative Tract No. 6490

RECOMMENDATION:

Planning Commission conduct a public hearing; and adopt Resolution No. 23-429, a Resolution of the Planning Commission of the City of Shafter, recommending the City Council approve and adopt execution of a first amendment to Development Agreement No. 21-20 for Tentative Tract No. 6490.

APPLICANT

Summit Capital Ventures, Inc.
8725 Swigert Court
Bakersfield, CA 93311

OWNER

Summit Capital Ventures, Inc.
8725 Swigert Court
Bakersfield, CA 93311

LOCATION: Tentative Tract No. 6490 is located on the east side of S. Mannel Avenue, between E. Ash Avenue and E. Los Angeles Avenue.

PROJECT ANALYSIS:

The City of Shafter and Summit Capital Ventures, Inc. (Owner) entered into a development agreement (DA) dated April 5, 2022, and recorded April 13, 2022, as Entry No. 222057077 in the office of the Kern County Recorder (see **Exhibit 1**). The current DA guides the development of Tract No. 6490, including rules for subdivision and collection of impacts fees.

The Owner has requested an amendment to DA No. 21-20 to change the language in Section 7.10 (Minimum Dwelling Unit Size) of the DA as shown in the following strikethrough/underline format:

Minimum Dwelling Unit Size: Owner agrees that the minimum single family dwelling unit size permitted in the subdivision shall be no less than ~~1,600~~ 1,441 square feet of living space, with an average dwelling unit size of all plans being offered of not less than ~~1,800~~ 1,600 square feet of living space. The minimum square foot requirement excludes garages, patios and/or porches whether enclosed or not.

Therefore, the Owner is requesting that the minimum unit size language in the DA be revised from 1,600 to 1,441 square feet and the average unit size from 1,800 to 1,600 square feet throughout the entirety of the tract.

Additionally, the owner requests revisions to the four house plans and elevations to be built within the tract (see **Exhibit "B" of Exhibit 2**). The revised house plan square

PUBLIC HEARING

footages are 1,441, 1,665, 1,844, and 2,120 square feet and each house plan would have four total elevations (Spanish, Farmhouse, Contemporary, and Modern). The previously approved house plans and elevations are found in **Exhibit “E” of Exhibit 1**.

The proposed amendment would not change any other conditions in the DA.

Staff believes that the amendment would be beneficial to the City by providing a more affordable housing product within the historic core of the City while at the same time not reduce the total number of units being built within the tract or sacrificing the quality of the units.

CEQA:

Per Section 15601(b)(3) (Common Sense) of the California Environmental Quality Act (CEQA) Guidelines, the action is exempt from CEQA because the environmental analysis for the original DA already analyzed and mitigated, to the greatest extent possible, environmental impacts as required by CEQA. The revisions in this first amendment do not result in an intensification of the identified impacts beyond what was previously analyzed because the number of units within the tract remains the same and only the size and look of the units change. Therefore, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and the activity is not subject to CEQA.

ATTACHMENTS

EXHIBIT

Development Agreement No. 21-20
Resolution No. 23-429

1
2

Jon Lifquist, Assessor – Recorder
Kern County Official Records

Recorded at the request of
Public

DUARTED
4/13/2022
8:54 AM

RECORDED AT REQUEST OF
CITY OF SHAFTER

WHEN RECORDED RETURN TO:

City of Shafter
336 Pacific Avenue
Shafter, CA 93263
Attention: City Clerk

DOC#: **222057077**



Stat Types: 1 Pages: **75**

Fees	0.00
Taxes	0.00
Others	0.00
PAID	\$0.00

Exempt from Filing Fees Gov. Code Section 27383

TENTATIVE TRACT NO. 6490
DEVELOPMENT AGREEMENT NO. 21-20

between

CITY OF SHAFTER
a California municipal corporation

and

Summit Capital Ventures, Inc., a California corporation

ARTICLE 1. PARTIES AND EFFECTIVE DATE

This Development Agreement ("Agreement") is entered into between (i) THE CITY OF SHAFTER, a California municipal corporation ("City") and (ii) Summit Capital Ventures, Inc., a California corporation ("Owner"). This Agreement shall become effective on the Effective Date.

ARTICLE 2. RECITALS

2.1 City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq. of the Government Code (the "Development Agreement Law"); and

2.2 City has adopted rules and regulations for consideration of development agreements, pursuant to Section 65865 (the "Development Agreement Procedures") for consideration of development agreements, pursuant to Section 65864, et seq. of the Government Code (the Development Agreement Law); and as further provided in Section 2.70 (Development Agreements), Chapter 2, Title 17 of the Shafter Municipal Code; and

2.3 Owner is the owner of the real property described in Exhibit "A", attached hereto and incorporated herein by this reference, which property is located within the City of Shafter, County of Kern, State of California; and

2.4 Owner has requested that City enter into a development agreement, and proceedings have been taken in accordance with the rules and regulations of City; and

2.5 By entering into this Agreement, City binds the City and future City Councils of City by the obligations specified herein, and limits the future exercise of certain governmental and proprietary powers of City; and

2.6 The terms and conditions of this Agreement have undergone extensive review by City and the City Council and have been found to be fair, just and reasonable and consistent with the City's General Plan and any applicable specific plan; and

2.7 All of the requirements of the California Environmental Quality Act have been met with respect to the Project and City has reviewed, considered and, on November 2, 2021, adopted the addendum to the Negative Declaration adopted for Tentative Tract No. 6490 for this project as adequate and complete; and

2.8 This Agreement and the Project are consistent with the Shafter General Plan; and

2.9 All actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters in accordance with the Development Agreement Law and Development Agreement Procedures; and

2.10 Development of the Property in accordance with this Agreement will provide substantial benefits to City and will further important policies and goals of City; and

2.11 This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under the Development Agreement Law are intended; and

2.12 Owner has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

2.13 Owner has incurred and will in the future incur costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement; and

2.14 On March 8, 2022 the Planning Commission of the City, following a duly noticed public hearing, recommended adoption of this Agreement to the City Council in accordance with the Development Agreement Law and Development Agreement Procedures; and

2.15 On March 15, 2022, at a duly noticed public hearing, the City Council of the City introduced **Ordinance No. 734** approving and adopting this Agreement and authorizing its execution by the City. The City further, at its April 5, 2022, meeting approved the second reading of said Ordinance.

ARTICLE 3. AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 4. DEFINITIONS AND EXHIBITS

4.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

4.1.1 “Agreement” means this Development Agreement.

4.1.2 “City” means the City of Shafter, a California municipal corporation.

4.1.3 “Days” means calendar days unless otherwise specified.

4.1.4 “Dedicate” is defined in Section 7.9.

4.1.5 “Development” means the improvement of the Property for the purposes of completing single family dwelling units, improvements and facilities comprising the Project including, but not limited to: grading, the construction of infrastructure and public facilities related to the Project whether located within or outside the Property, the construction of single family dwelling units, and the installation of required landscaping. “Development” includes, without limitation, the right to maintain, repair, or reconstruct any private building, structure, improvement or facility after the construction and completion thereof; provided, however, that such maintenance, repair, or reconstruction takes place within the term of this Agreement on parcels subject to it.

4.1.6 “Development Approvals” means all permits and other entitlements required for the development and/or use of the Property and which are subject to approval or issuance by City in connection with the Development of the Property including, but not limited to:

- (a) General Plan amendments;
- (b) Zoning and Zoning Amendments;
- (c) Tentative and final subdivision or parcel maps, and Lot Line Adjustments;
- (d) Conditional use permits, but only as to those conditions and requirements pertaining to the development of the Property;
- (e) Design review approvals;
- (f) Grading and building permits; and
- (g) California Environmental Quality Act Requirements

“Development Approvals” specifically do not include this Agreement.

4.1.7 “Development Exactions” mean, except as otherwise provided in this Agreement, all exactions, in lieu fees or payments (including but not limited to impact mitigation fees) or dedication or reservation of land requirements, obligations for on-site or off-site improvements or construction requirements of a type not normally regarded as subdivision improvements, mitigation measures in connection with environmental review, or impositions made under other rules, regulations, or official policies of the City or in order to make a Development Approval consistent with the City’s General Plan, including without limitation, any requirements of City in connection with or pursuant to any Land Use Regulation or Development Approval for the development of land, the construction of improvements for public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests. Development Exactions shall not include filing fees or other Processing Fees.

4.1.8 “Development Plan” means the Existing Development Approvals and the Existing Land Use Regulations applicable to the Development of the Property.

4.1.9 “Effective Date” means the 30th day after the second reading of the City Council ordinance which adopts and approves this Agreement, unless timely referendum proceedings to set aside the ordinance adopting this Agreement are commenced, in which case the occurrence of the Effective Date shall be postponed until the final disposition of the referendum, including the disposition of any judicial proceedings commenced with respect thereto.

4.1.10 “Existing Development Approvals” means all Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the approvals incorporated herein as Exhibit “C” of this agreement and all other approvals which are a matter of public record on the Effective Date.

4.1.11 “Existing Land Use Regulations” means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations include, without limitation, all regulations of the City which are a matter of public record on the Effective Date, as they may be modified by the Existing Development Approvals.

4.1.12 “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of City legally adopted in accordance with all applicable laws governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and all Development Exactions, the phasing or timing of development, and the design, improvement and construction and initial occupancy standards and specifications applicable to the Development of the Property as they may be modified by the Development Approvals. “Land Use Regulations” includes those land use regulations in the General Plan but does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) The conduct of businesses, professions, and occupations;
- (b) Other than as provided in this Agreement, taxes and assessments of general application, provided that the taxes and assessments are not imposed for the purpose of taxing the right, power or privilege of developing or improving land (e.g. excise tax) or to directly finance the construction or maintenance of any public improvement in respect of which Owner is paying any fee or providing any improvement pursuant to ARTICLE 7 hereof;
- (c) The control and abatement of nuisances;
- (d) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (e) The exercise of the power of eminent domain.

4.1.13 “Negative Declaration” means that certain addendum to the Negative Declaration adopted for Tentative Tract No. 6490 by the City Council of the City of Shafter on May 3, 2005, under Resolution No. 05-1727.

4.1.14 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

4.1.15 "Owner" means Summit Capital Ventures, Inc., a California corporation, and permitted successors in interest to all or any part of the Property.

4.1.16 "Processing Fees" means the normal and customary application, filing, plan check, and permit fees for land use approvals, design review, tree removal permits, building permits, demolition permits and other similar permits and entitlements, and inspection fees, which fees are charged to reimburse the City's expenses attributable to such applications, processing, permitting, review and inspection and which are in force and effect on a general basis at such time as said approvals, permits, review, inspection or entitlements are granted or conducted by City.

4.1.17 "Project" means the future development of the entirety of the public and private improvements on the Property in a manner consistent with the Development Plan, as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

4.1.18 "Property" means the real property described on Exhibit "A" and shown on Map on Exhibit "B" to this Agreement.

4.1.19 "Public Improvements" means those Public Improvements described in Sections 7.3 through 7.11, inclusive.

4.1.20 "Public Improvement Obligations" means the obligation to Dedicate those certain public improvements specifically described in ARTICLE 7 of this Agreement (together with all applicable exhibits) and the real property interests associated therewith.

4.1.21 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City including, without limitation, those rights and authorities described in Section 6.5 of this Agreement.

4.1.22 "Subsequent Development Approvals" means all Development Approvals required subsequent to the Effective Date in connection with development of the Property, including without limitation, subdivision improvement agreements which require the provision of bonds or other securities.

Subsequent Development Approvals include, without limitation, all excavation, grading, building, construction, demolition, encroachment or street improvement permits, occupancy certificates, utility connection authorizations, or other non-discretionary permits or approvals necessary, convenient or appropriate for the grading, construction, marketing, use and occupancy of the Project within the Property at such times and in such sequences as Owner may choose consistent with the Development Plan and this Agreement.

4.1.23 “Subsequent Land Use Regulations” means any Land Use Regulations or any amendments to Existing Land Use Regulations legally adopted and effective after the Effective Date of this agreement.

Other initially capitalized terms appearing in this Agreement shall have the meaning given to them at the point at which they first appear.

4.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

- Exhibit “A” - Legal Description of the Property
- Exhibit “B” - Map of Property
- Exhibit “C” - List of Existing Development Approvals
- Exhibit “D” - Conditions of Approval for Tentative Tract No. 6490
- Exhibit “E” - Elevations

ARTICLE 5. GENERAL PROVISIONS.

5.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Subject to the Owner’s receipt of all Development Approvals relative thereto, the Development of the Property is hereby authorized and shall, except as otherwise provided in this Agreement, be carried out only in accordance with the terms of this Agreement.

5.2 Fee Interest in Property. Owner represents, covenants and warrants that as of the Effective Date it is the sole holder of fee simple absolute title to the Property.

5.3 Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of five (5) years thereafter, unless this term is modified or extended pursuant to the provisions of this Agreement.

5.4 Assignment, Sale and Transfer of Interest in the Property and this Agreement.

5.4.1 Right to Assign.

(a) Owner shall have the right to assign Owner’s rights and obligations under this Agreement, but only in connection with the concurrent sale, assignment, ground lease, encumbrance, or other transfer (collectively, a “Transfer”) of all or any portion of the Property. Upon (1) any Transfer of all or any portion of the Property, (2) the express assumption of Owner’s obligations (with respect to the portion of the Property being transferred) under this Agreement by such transferee and (3) City’s prior written consent, which consent shall not be unreasonably withheld, Owner shall be relieved of and from further liability or responsibility for compliance with the obligations arising under this

Agreement (with respect to the portion of the Property being transferred), and City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee; provided however, that the City shall look solely to Owner for compliance with the provisions of this Agreement as such provisions relate to the portion of the property not so transferred. In order to permit City to make an informed decision to approve or disapprove a proposed assignment of Owner's rights and obligations under this Agreement, or any partial assignment thereof, City may reasonably require the proposed transferee (other than an Owner Affiliate, defined hereinafter) to submit financial statements and evidence of its fitness, experience and ability (or that of its senior managerial personnel) to comply with the obligations being assumed. Notwithstanding anything to the contrary in this Section 5.4.1, no consent shall be required for any assignment to an "Owner Affiliate"; provided, however, that all conditions and provisions of subsection (b) of this Section 5.4.1 have been satisfied except as otherwise expressly provided in Section 5.4.1(b). The term "Owner Affiliate" shall mean any of the following:

(1) any member of Owner or any shareholder or shareholders of any member who own(s) and control(s), directly or indirectly, fifty percent (50%) or more of the common stock of such member ("Owner Member").

(2) any general or limited partnership in which Owner or an owner partner, individually or collectively, is/are the managing general partner of such partnership.

(3) any limited liability company in which Owner or an owner member, individually or collectively, is/are the managing member of such limited liability company, or control, directly or indirectly, fifty-one percent (51%) or more of the ownership interest in such limited liability company.

(b) City's consent to an assignment by Owner under this Section 5.4.1 shall not be unreasonably withheld provided (i) Owner notifies City at least forty-five (45) business days prior to the date of such assignment, (ii) the transferee (including any Owner Affiliate) expressly assumes Owner's obligations (with respect to the portion of the Property being transferred) under this Agreement, and (iii) prior to the date of such assignment the transferee (including any Owner Affiliate) posts cash, surety bonds, letters of credit or other collateral reasonably acceptable to City and equivalent to any security previously provided by Owner to City to secure the transferee's performance of its obligations with respect to the portion of the Project being acquired by such transferee and of all required Public Improvements (with respect to the portion of the Property being transferred). Notwithstanding clause (iii) in the preceding sentence, where adequate surety bonds, letters of credit or other collateral has already been provided by Owner and the Owner and such transferee choose to not substitute surety bonds, letters of credit or other collateral in accordance with clause (iii), the City's consent shall not be withheld provided the following conditions are met: (1) Owner shall not reduce any of the surety bonds, letters of credit or other collateral previously provided; and (2) Owner shall cause to be named in any instrument establishing rights of the City under any such surety bonds, letters of credit or other collateral the transferee as the obligee thereunder. In such event, and

notwithstanding Section 5.4.1(c) below, the surety bonds, letters of credit or other collateral previously provided by Owner shall not be reduced. Any notification under (i) above shall be forwarded, in writing, to the City Manager with a copy to the City Attorney. It is understood and agreed that, until all of the conditions set forth in clauses (i), (ii) and (iii) immediately hereinabove have been performed, Owner shall not be relieved of and from liability or responsibility for compliance with the obligations arising under this Agreement with respect to the portion of the Project being transferred. In order to permit City to determine the amount and type of collateral that will be reasonably acceptable, City may, as part of its rights under this Section 5.4.1 above, reasonably require the proposed transferee (excepting an Owner Affiliate) to submit financial statements and evidence of its fitness, experience and ability (or that of its senior managerial personnel) to comply with the obligations being assumed.

(c) With respect to any permitted assignment pursuant to the provisions of this Section 5.4.1, City shall release Owner from its obligations under this Agreement and any other agreements or undertakings pertaining to the transferred portion of the Project, and release to Owner any bonds or other security posted to secure obligations under such agreements or undertakings, provided the transferee expressly assumes the obligations under such agreements and substitutes bonds or other security acceptable to City in place of the security to be released.

(d) Nothing contained in this Section 5.4.1 shall prevent a Transfer of the Property, or any portion thereof, to a lender as a result of a foreclosure or deed in lieu of foreclosure, and any successor in interest (including the lender) acquiring the Property, or any portion thereof, as a result of foreclosure or a deed in lieu of foreclosure shall take such Property subject to the rights and obligations of Owner under this Agreement; provided, however, in no event shall such successor in interest (including the lender) be liable for any defaults or monetary obligations of Owner arising under this Agreement prior to acquisition of title to the Property by such successor in interest, and provided further, in no event shall any such successor in interest be entitled to a building permit or occupancy certificate until all fees due under this Agreement relating to the portion of the Property acquired by such successor in interest have been paid to City and until any other default relating to the portion of the Property acquired by such successor in interest has been cured.

(e) Any amendment to this Agreement between City and a transferee shall only affect the portion of the Property owned by such transferee, and a default by such transferee shall only affect that portion of the Property owned by such transferee.

5.4.2 Subsequent Assignment. Any subsequent assignment after an initial assignment shall be made only in accordance with and subject to the terms and conditions of Section 5.4.1.

5.4.3 Construction of Roadway Improvements Upon Sale. In the event that Owner sells a portion of the Property, Owner and the new owner of the portion sold by Owner shall be jointly responsible for constructing a road to provide access to the public road system for the parcel sold by Owner. In its sole discretion, City may require that any

road constructed to provide access pursuant to this Section 5.4.3 be offered for dedication to the City and constructed to City standards.

5.4.4 Termination of Agreement with Respect to Individual Lots and Units.

5.4.4.1 Release of Subdivided Lots. Any other provisions of this Agreement notwithstanding, this Agreement shall terminate with respect to any lot, or, as to common areas in common interest subdivision, upon the sale of the first unit, and such lot or unit shall be released and no longer subject to this Agreement without need for the execution or recordation of any further document, upon satisfaction of both of the following conditions.

(i) The lot or unit has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and

(ii) A certificate of occupancy has been issued for a building on the lot. No such release approved pursuant to the Subsection 5.4.5.1 shall cause or otherwise affect a release of Owner from its duties and obligations under this Agreement as to the remainder of the Property owned by Owner.

(iii) The fees set forth in Section 7.2 have been paid in full to the City for the lot.

5.4.4.2 Partial Release of Purchaser, Transferee or Assignee of a Lot. If a purchaser, transferee or assignee of a lot (i) which have been finally subdivided as provided for in the Development Plan and for which a site design review for development of the lot has been finally approved pursuant to the Development Plan or, (ii) if such site design review has not been approved, but the lot is a subdivided lot and the conditions of approval of the subdivision map requires security to the reasonable satisfaction of City for the performance of the improvement obligations applicable to the lot, then City shall release said lot from the obligations under this Agreement relating to all other portions of the Property. No such release approved pursuant to this Section 5.4.5.2 shall cause or otherwise affect a release of Owner from its duties and obligations under this Agreement as to the remainder of the Property owned by Owner.

5.5 Amendment or Cancellation of Agreement. This Agreement may be amended, modified or canceled in whole or in part only by the following means:

(i) As provided in Article II;

(ii) Pursuant to Government Code Section 65869.5, as necessary to comply with state or federal laws or regulations enacted after the Effective Date; provided, however, that this Agreement shall remain in full force and effect to the extent that it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render the remaining provisions of this Agreement impractical to enforce; or

(iii) By mutual written consent of both the City and the Owner pursuant to Government Code Section 65868, following all required public notices and hearings and City Council approval; provided, however, that within the limits of the authority granted to him or her, the City's Planning Director may make the following minor modifications to this Agreement without the need for formal action by the City's Planning Commission or City Council;

(a) Minor modifications of schematic plans approved by the City; and

(b) Minor modifications that do not alter the terms of this Agreement, the permitted uses, density or intensity of uses, maximum height or size of buildings, provisions for reservations or dedication of land, conditions, terms, restrictions and requirements relating to Subsequent Development Approvals, and monetary contributions by the Owner.

5.6 Automatic Termination. This Agreement shall automatically terminate and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 5.3.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) The adoption of a referendum measure pursuant to Section 65867.5 overriding or repealing the ordinance approving this Agreement.

(d) Completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits and acceptance by City or applicable public agency of all required Dedications and improvements.

(e) Upon the default of Owner or City to the extent provided in ARTICLE 9 and ARTICLE 10, respectively.

(f) The entry of a final judgment (or a decision on any appeal therefrom) voiding the City's General Plan or any element thereof, which judgment or decision would preclude development of the Project, but only if the City is unable to cure such defect in the General Plan or element within one hundred and eighty (180) days from the later of entry of final judgment or decision on appeal.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property unless such land use entitlements are conditioned upon the continued existence of this Agreement or upon the construction of improvements or the payment of fees described in this Agreement and Owner fails to construct such improvements or pay such fees as required in the conditions to the land use entitlements or this Agreement. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have

been performed prior to such termination, or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination, or with respect to any obligations which are specifically set forth as surviving this Agreement. Upon such termination, all fees paid pursuant to ARTICLE 7 of this Agreement by Owner to City for buildings on which construction has not yet begun shall either, at City's option, be refunded to Owner by City; or applied as a credit to future development fees due from Owner, provided, however that Owner may designate another party to receive such refund or credit. Notwithstanding anything to the contrary in this Section 5.6, Owner shall receive the applicable fee credits set forth in ARTICLE 7 for those portions of any Public Improvements Dedicated to the City prior to such termination. Those fee credits shall survive such termination and may be used by Owner, to the extent not previously used by Owner, to offset the City's collection of such fees in connection with the Project.

5.7 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) three days after deposit in the United States mail, postage prepaid, addressed to the recipient named below; or (iv) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below; or (v) on the date of delivery by facsimile transmission to the recipient named below. All notices shall be addressed as follows:

If to City:

City Manager
City of Shafter
336 Pacific Avenue
Shafter, California 93263
Fax No. (661) 746-0607

with a copy to:

Best Best & Krieger LLP
2855 E. Guasti Road, Suite 400
Ontario, California 91761
Attn: Shafter City Attorney
Fax No. (909) 944-1441

If to Owner:

Summit Capital Ventures, Inc.
8725 Swigert Court
Bakersfield, CA 93311

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

5.8 Validity of This Agreement. The Owner and the City each agree that neither party has made any representations to the other concerning the enforceability or validity of any one or more provisions of this Agreement.

ARTICLE 6 DEVELOPMENT OF THE PROPERTY.

6.1 Rights to Develop. Subject to the terms of this Agreement, including the Reservations of Authority, Owner shall have a vested right to develop the Property in accordance and to the extent of, the Development Plan and subject to the Existing Land Use Regulations. The property shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, and subject to the Reservations of Authority, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and Dedication of land for public purposes and other Development Exactions, the phasing and timing of development, the design, improvement and construction standards and specifications applicable to development of the Property, and other terms and conditions of development applicable to the Property shall be those set forth in the Development Plan.

6.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, including the Reservations of Authority, the rules, regulations and official policies and conditions of approval governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, provisions for reservation and Dedication of land for public purposes, and other Development Exactions, the phasing and timing of development, and the design, improvement, occupancy and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. Except as otherwise provided in this Agreement, City shall only charge those fees, assessments and amounts which are in effect as of the Effective Date (other than Processing Fees) and no additional Development Exactions through the exercise of either the police power or the taxing power or the Subdivision Map Act shall be imposed by City on the development of the Property; provided, however, that in approving tentative subdivision maps, City may impose ordinary and necessary Dedications for rights-of-way or easements for public access, utilities, water, sewers and drainage, having a direct nexus with the particular subdivision; provided, further, that City may impose and will require normal and

customary subdivision improvement agreements and commensurate security to secure performance of the Owner's obligations thereunder.

City shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters unless otherwise required by this Agreement to be expedited or given priority.

Owner acknowledges and agrees that the failure or inability of public utility providers other than the City including, without limitation, such providers as electricity, gas, telephone, and cable to provide the appropriate amount and type of utility service to the Property shall be sufficient cause for City to withhold issuance of approvals hereunder necessary for the development and/or occupancy of those buildings to which such utility service is not then available until such service is available. A will serve letter issued by a utility provider shall be conclusive evidence that the utility service is available to that portion of the Property covered by that letter. City agrees that it shall not take any action with the express intent of preventing any such provider from furnishing appropriate utility service to the Property.

6.3 Timing of Development. The parties acknowledge that Owner cannot at this time predict when or the rate at which phases of the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing provisions set forth in this Agreement or the Development Plan.

6.4 Changes and Amendments. The parties acknowledge that development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event Owner finds that a change in the Existing Development Approvals is necessary or appropriate, Owner shall apply for a Subsequent Development Approval to effectuate such change and City shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement, including the Reservations of Authority. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or

- (b) Increase the density or intensity of use of the Property as a whole;
- or
- (c) Increase the maximum height and size of permitted buildings; or
- (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or
- (e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code, as it exists from time to time.

6.5 Reservations of Authority.

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

- (a) Processing Fees imposed by City to cover the estimated or actual costs to City of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, which fees are charged to reimburse the City's expenses attributable to such applications, processing, permitting, review and inspection and which are in force and effect on a general basis at such time as said approvals, permits, review, inspection or entitlements are granted or conducted by City.
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.
- (c) Regulations, policies (written or unwritten) and rules governing engineering and construction standards and specifications applicable to private or public improvements including, without limitation, any and all uniform codes adopted by the City, including local amendments to those codes adopted pursuant to state law allowing for such amendments; provided that such codes are uniformly applied to all new development projects of the same uses within the City. Such codes include without limitation, the City's Uniform Housing Code, Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Building Security Code. City agrees that such regulations, policies and rules shall be those applied on a City-wide basis to all development projects of a similar type as the Project.
- (d) Regulations which may be in conflict with the Development Plan but which are reasonably necessary to protect the residents of the Project or of the immediate community, or both, from a condition perilous to their health or safety, or both; provided, however, the following shall apply:

(i) That to the extent possible, such regulations shall be applied and construed so as to provide Owner with the rights and assurances provided in this Agreement; and

(ii) That such regulations apply uniformly to all new development projects of the same uses within the City; and

(iii) That the City Council finds, based on substantial evidence, that such regulations are necessary to eliminate or reduce a public danger perilous to the health or safety of the residents of the Project or of the immediate community.

(e) Subsequent regulations which do not conflict with the Development Plan. For the purposes of this Agreement, the term “does not conflict” and its variants means new rules, regulations, and policies which: (i) do not modify the Development Plan, including, without limitation, the permitted land uses, the density or intensity of use, the phasing or timing of development of the Project, the maximum height and size of proposed buildings on the Property, provisions for Dedication of land for public purposes and Development Exactions, except as expressly permitted elsewhere in this Agreement, and standards for design, development and construction of the Project, except with respect to uniform codes as permitted elsewhere in this Agreement; (ii) do not prevent Owner from obtaining any Subsequent Development Approvals, including, without limitation, all necessary approvals, permits, certificates, and the like, at such dates and under such circumstances as the Owner would otherwise be entitled by the Development Plan; or (iii) do not prevent Owner from commencing, prosecuting, and finishing grading of the land, constructing public and private improvements, and occupying the Property, or any portion thereof, all at such dates and schedules as Owner would otherwise be entitled to do so by the Development Plan. Any Regulation whether adopted by initiative or otherwise, limiting the rate, timing, type or density of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property, unless otherwise provided for in this Agreement or by statute.

(f) Regulations which are in conflict with the Development Plan, provided Owner has given written consent to the application of such regulations to the Development of the Property.

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

6.5.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to

comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

6.5.4 Intent. The parties intend that, unless otherwise expressly herein provided, or as otherwise provided by law, this Agreement embodies the full terms and conditions relative to the proposed Development of the Project. Notwithstanding the foregoing, however, Owner and City each agree that neither party has made any representations to the other concerning the enforceability or validity of this Agreement or any one or more of its provisions and that each party has exercised due diligence in ascertaining for itself the validity and enforceability of this Agreement and its provisions.

6.6 Public Works. Owner is required by this Agreement to construct public work facilities and improvements which will be Dedicated to City or other public agencies upon completion. Unless required by applicable law to do so, Owner shall not be required to perform such work in the same manner and subject to the same requirements as would be applicable to City or such other public agency should it have undertaken such construction including, without limitation, the payment of prevailing wages pursuant to Labor Code Section 1770 et seq. Should it be determined in the future by either the Legislature or a court of competent jurisdiction that Owner was required to comply with the same requirements as would be applicable to City should it have undertaken such construction, Owner shall defend, indemnify and hold harmless City and its elected officials, officers, employees, agents and contractors from any and all liability, costs, claims, damages, fines, penalties and expense, including costs of litigation and attorneys' fees, arising out of or in any way connected with Owner's construction of the public work described in this Agreement.

6.7 Provision of Off-Site Real Property for Public Improvements. The City and Owner acknowledge that certain Public Improvements may be located on property which is neither owned nor controlled by the Owner. For purposes of this Section 6.7, any individual parcel of such property on which the Offsite Improvements will be located shall be hereinafter referred to singularly as a "Subject Property", and collectively as "Subject Properties."

6.7.1 No Commitment to Condemn. Owner hereby acknowledges and understands that this Agreement does not obligate the City in any way to use its power of eminent domain to acquire any Subject Property. The City's use of the power of eminent domain is conditioned by law upon certain findings and determinations that the City Council in its sole discretion, must make in accordance with California Code of Civil Procedure Sections 1240.030, 1240.040, and 1245.230. These findings and determinations include, without limitation, all of the following:

(i) The public interest and necessity require the Offsite Improvement;

(ii) The Offsite Improvement is planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

(iii) The Subject Property is necessary for the Offsite Improvement; and

(iv) That either the offer (if any) required by Section 7267.2 of the California Government Code has been made to the owner or owners of record, or the offer has not been made because the owner or owners cannot be located with reasonable diligence.

Owner hereby acknowledges and understands that as of the date of this Agreement, the City has not considered the propriety of the use of its power of eminent domain to acquire any Subject Property. The City makes no representation or guarantee whatsoever concerning the eventual result or outcome of its discretionary consideration of the use of its power of eminent domain to acquire any Subject Property or of any actual eminent domain proceeding.

6.7.2 Indemnity. Owner hereby agrees to defend (with counsel reasonably acceptable to the City), indemnify and hold harmless the City, its officials, officers, employees, agents, attorney, and contractors from and against all third party liability, claims, lawsuits, judgments, fines, penalties, amounts paid in settlements, costs and expenses arising out of or in any way connected with the City's actions under this Section 6.7 with respect to any Subject Property, except to the extent that such liability arising from the negligence or willful misconduct of the City, its official, officers, employees, agents, attorney or contractors. Owner's obligations under this Section 6.7.2 shall survive the expiration or termination of this Agreement.

6.7.3 Cooperation. The parties hereby agree to take such other actions and execute such other reasonable documents as are consistent with this Section 6.7 and as are reasonably necessary to effectuate this Section 6.7; provided, however, that the foregoing shall not require the City to take any legislative act or exercise its discretion in any particular manner.

6.7.4 Effect of Termination, Expiration or Invalidity of this Agreement. If the City terminates this Agreement in accordance with the provisions for termination contained herein, or if this Agreement otherwise expires or is declared invalid, Developer agrees that such termination, expiration, or determination of invalidity shall survive and Owner shall remain liable to City for all Costs reasonably incurred by City up to the date of such termination, expiration or determination of invalidity and shall remain liable to the City for all Costs reasonably incurred by the City subsequent to such termination, expiration or determination of invalidity relative to the taking of such actions as are necessary, as determined by the City in its sole and absolute discretion, to terminate any acquisition activity undertaken prior to such termination, including, without limitation, amounts that the City may pay pursuant to California Code of Civil Procedure Section 1268.610 et. seq., as a result of the City's election to abandon or settle any judicial proceedings which may have been filed.

6.8 Environmental Compliance. Owner and City acknowledge that City's adoption of the addendum to the Negative Declaration adopted for Tentative Tract No. 6490 described in the recitals hereto reflect City's determination that the addendum to the Negative Declaration adopted for Tentative Tract No. 6490 was adequate, that such adoption is the product of City's independent review and judgment, that it satisfied the requirements of the California Environmental Quality Act, and that it fully and adequately analyzed the environmental impacts of the Project. No mitigations measures other than those expressly identified in the Negative Declaration, the Existing Development approvals, or this Agreement shall be imposed on the Property or as an obligation of Owner for the development of the Property in accordance with the Development Approvals. However, City may impose additional environmental review and mitigation measures upon Subsequent Development Approvals where such additional environmental review and measures are required pursuant to Public Resources Code Section 21166, and California Code of Regulations Title 14 Section 15162, as those sections may be amended or substituted.

6.9 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City and this Agreement does not limit the authority of such other public agencies.

6.10 Tentative Map Extension. Pursuant to the provisions of Section 66452.6, any tentative subdivision map or tentative parcel map approved in connection with Development of the Property shall be granted an extension of time for a period of five (5) years from the Effective Date of this Agreement; provided, however, that City may impose conditions on tentative map extensions in accordance with Reservation of Authority.

6.11 Vesting Tentative Maps. If any tentative or final subdivision map or tentative or final parcel map hereafter approved in connection with development of the Property is a vesting map under the Subdivision Map Act (Section 66410, et seq.) and Chapter 7, Title 16 and following, of City Municipal Code (as it may be amended from time to time), and if this Agreement is determined by a final judgment to be invalid or unenforceable insofar as it grants a vested right to develop to Owner, then and to that extent the rights and protection afforded Owner under the laws and ordinances applicable to vesting maps shall supersede the provisions of this Agreement. Except as set forth immediately above, development of the Property shall occur only as provided in this Agreement, and the provisions in this Agreement shall be controlling over any conflicting provision of law or ordinance concerning vesting maps.

6.12 Phasing Plan. Development of the Property and the Public Improvements shall be subject to all timing and phasing requirements established by this Agreement or the Development Plan. Owner has reserved the right to modify the phasing and timing of the development of the Property in its sole discretion. In the event Owner elects to amend the phasing of the Project, Owner shall give the City written notice of the revised phasing plan and shall provide the City Manager with a proposed revision to the Infrastructure Phasing Plan. The City Manager shall review and approve or approve with modifications the revised Infrastructure Phasing Plan within thirty (30) days of its submittal to the City

Manager. In reviewing and approving the revised Infrastructure Phasing Plan, the discretion of the City Manager shall be limited to a determination as to whether the revised Infrastructure Phasing Plan will provide the necessary Public Improvements required to serve the associated phases of development set forth in the revised phasing plan. The determination of the City Manager with respect to the revised Infrastructure Phasing Plan may be appealed to the Planning Commission and any decision made by the Planning Commission may be appealed to the City Council pursuant to the then-existing appeal provisions of the City Code.

6.13 Application of Government Code Section 66462.5. The provisions of Government Code Section 66462.5 shall not apply to any of the Public Improvements and Owner hereby waives, to the maximum legal extent, any benefits accruing to Owner pursuant to Government Code Section 66462.5 and all other statutes and judicial decisions of similar effect; provided, however, that Government Code Section 66462.5 and all other statutes and judicial decisions of similar effect will continue to apply, to the extent applicable, to all other public improvements other than the Public Improvements.

OWNER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BY INITIALING BELOW, DEVELOPER HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES:


Owner's Initials

ARTICLE 7. PUBLIC BENEFITS.

7.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public needs which will not be fully met by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on Owner which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by providing more fully for the satisfaction of the public needs resulting from the Project.

7.2 Impact Fees. Subject to any fee credits set forth in this ARTICLE 7, Owner shall pay to City the following public facilities and services impact fees at the times

provided therefor by applicable City ordinance or resolution, which fees are as of the Effective Date as follows:

7.2.1 Traffic Impact Fee: Developer shall pay the traffic impact fee in effect at the time that the building permit is issued for each single-family residence. Notwithstanding the amount of the development impact fees in place, the fees paid by the Developer shall not exceed \$10,000.00

7.2.2 Park Impact Fee: Developer shall pay the park impact fee in effect at the time that the building permit is issued for each single-family residence. Notwithstanding the amount of the development impact fees in place, the fees paid by the Developer shall not exceed \$5,000.00.

7.2.3 Developer understands and agrees that the fee limitations contained in Section 7.2.1 and 7.2.2 apply only to the Traffic Impact Fee and Park Impact Fee and not to other categories of impact fees, Development Exactions and Processing fees, whether in existence or later-enacted.

7.3 Landscaping Improvements. Owner shall, at its sole cost, expense and liability, construct those certain landscaping improvements required as “conditions of approval” of Tentative Tract Map No. 6490 as described in Exhibit “D” of this Agreement and as described in Section 4.1.6 (Development Approvals) of this Agreement. Owner shall dedicate any required improvements to the City at the time of recordation of the final map for which the improvements were a condition of approval. Owner will construct such landscaping improvements in accordance with City and other applicable governmental agency rules, codes, standards, ordinances and regulations in accordance with the Existing Land Use Regulations, subject to the Reservations of Authority.

7.4 Public School Impact Fee. Owner shall pay all public school impact fees required by the Richland School District attributable to the Project. The Richland School District and Owner may form a Communities Facilities District (“CFD”) pursuant to the terms of Government Code Section 53311, et seq., the territory of which shall include the Project, for the purposes of the payment of public school impact fees attributed to the Project. Owner shall consent to the annexation of the formation of the CFD prior to recordation of the first final map for the Project or the first sale, transfer or conveyance of the Property or any portion thereof.

7.5 Flood Control and Storm Drainage Improvements. Owner shall meet all applicable conditions of approval pursuant to Resolution No. 05-1727 in Exhibit “D” consistent with the tract design, as illustrated in Exhibit “B”, found to be in substantial conformance by the City Engineer.

7.6 Public Utilities Impact. Contemporaneously with or prior to the approval of each final map applicable to the Project, Owner shall provide written evidence, acceptable to City, that Owner has fully satisfied all public utilities impact measures lawfully required by any public utility purveyor, including, without limitation, phone,

water, electric, cable television and gas, which will service that portion of the Project. Failure to provide such evidence will result in disapproval of any final map.

7.7 Alternative Improvements Interests. City and Owner acknowledge and agree that acquisition of the real property and other interests necessary for the construction of the public improvements described in this ARTICLE 7 is subject to the provisions of Section 6.7. If, due to any reason whatsoever, Owner is unable to construct those public improvements described in this ARTICLE 7 due to the inability of either Owner or City to acquire the necessary real property or other interests to allow such construction, then Owner shall construct alternative improvements of an equal or greater value than those improvements which would have been constructed had the necessary property and other interests been obtained or pay the applicable fees in lieu thereof. The value of such alternative improvements, and the corresponding credit granted to Owner against those fees which Owner would otherwise be required to pay but for its construction of the improvements contemplated in this ARTICLE 7, shall be as determined in the City's reasonable discretion, consistent with the programs, studies and reports substantiating the amount of development impact fees adopted by the City. Construction of the alternative improvements shall be in accordance with plans and specifications approved by City in accordance with all codes, ordinances, regulations, standards and policies in effect at the time of the construction of the improvements.

7.8 Environmental Site Inspection. Owner hereby grants to the City, its agents, contractors, employees and other representatives the right to enter upon the Property during reasonable business hours for purposes including, without limitation, the surveying, inspecting, photographing, sampling, and other testing necessary, in the City's absolute discretion, to the determination of whether hazardous or toxic pollutants, contaminants or materials (collectively, "environmental contaminants") are located upon any property which the City will be receiving through Dedication including, without limitation, parks, rights of way, and utility easements. Upon discovery of any environmental contamination, Owner shall immediately cease any work that may have begun upon the Project, will notify all appropriate governmental authorities and regulatory agencies, and will take all steps necessary to comply with any provisions of any federal or state environmental laws, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, and all other federal or state statutes of similar import and effect.

7.9 Dedication. The term "Dedicate" as used in this ARTICLE 7 means to acquire and offer the subject land for dedication and to construct the improvements to be constructed by the Owner on such land pursuant to this ARTICLE 7 and thereafter to convey such land and improvements to the City. Owner shall convey the land on which the Public Improvements are to be constructed at the time provided therefor by the Infrastructure Phasing Plan, but in no event later than the recordation of the final tract map for which such Public Improvement(s) was/were a condition of approval. Owner shall Dedicate/convey easement interests in all property required to be Dedicated by this Agreement. The Owner shall Dedicate each Public Improvement upon completion of a segment component of such Public Improvement.

7.10 Minimum Dwelling Unit Size: Owner agrees that the minimum single family dwelling unit size permitted in the subdivision shall be no less than 1,600 square feet of living space, with an average dwelling unit size of all plans being offered of not less than 1,800 square feet of living space. The minimum square foot requirement excludes garages, patios and/or porches whether enclosed or not.

7.11 Fiber Optic and Networking Installation for Dwelling Units: Owner agrees to install in each dwelling unit the following fiber optic and networking requirements:

Building Department Requirements

a. Install a dedicated City Fiber Enclosure adjacent to the other utility enclosures or a Common Communication Enclosure (collectively "Utility Enclosure") for the proposed communications utilities (phone, cable, fiber, etc.). The enclosure type shall be Benner-Nawman 14326W-UL or as approved by the City. The Utility Enclosure may face the garage exterior or interior and shall include one 120-volt, 15-amp convenience receptacle mounted inside the enclosure on either side wall with the outlets facing horizontally. The receptacle power shall be protected by a ground fault circuit interrupter (GFCI).

b. Install a wireless-transparent 28-30-inch or 42-inch Structured Media Enclosure ("Media Enclosure") of type Legrand 30" ENP3050(30") or 42" ENP4250, Leviton 30" 49605-30W, Primex Verge 30" P3C00 or 42" P4200 or as approved by the City in a master bedroom closet wall or a laundry room wall furthest from the water supply and maintain a minimum 48-inch horizontal clearance between and 24-inch clearance above any metallic appliances or accessories. The enclosure shall include one 120-volt, 15-amp convenience receptacle located inside the enclosure.

c. Install a conduit pathway from the Utility Enclosure to the Media Enclosure with a minimum of one (1) 1-inch diameter non-metallic, flexible conduit which shall maintain a minimum 36-inch bend radius and protrude a minimum of 6-inches into the enclosures. The conduit shall be marked with orange Tyvek or plastic tags, labeled "City Fiber Use Only", 661-746-5000", tie wrapped to the conduit in plain view within the enclosures

d. Install a continuous conduit without breaks or couplings from the existing City Fiber Distribution Enclosure located in the right-of-way ("Distribution Enclosure") to the bottom side of the Utility Enclosure. The conduit shall be installed a minimum of 36-inches below grade, protrude a minimum of 12-inches into the Utility Enclosure, be orange in color, and be factory labeled "City of Shafter 661-746-5000". If the conduit does not have an integrated tracer wire, a continuous external #12 AWG solid-conductor tracer wire with high-density polyethylene insulation rated for direct burial shall be installed along with the conduit leaving a minimum 15-feet of slack coiled in the Distribution Enclosure and 3-feet of slack coiled in the Utility Enclosure. The conduit and tracer wire shall be inspected by a City of Shafter Public Works Department representative before shading and backfilling.

i. After backfilling, the conduit shall be mandrel tested between the Distribution Enclosure and the Utility Enclosure. All conduits ½-inch or larger shall require mule tape or equivalent installed. Mule tape shall be slack (no tension) and fastened to the plug or cap. Innerducts and microducts shall have the pull string completely removed before being tested with a ball bearing. The testing process shall be witnessed by a City of Shafter Public Works Department representative.

ii. Couplings shall be used to repair damaged or short conduit only if approved by the City. Conduit couplings shall be an air-tight, water-tight, push-on compression fitting approved by the City. Tracer wire couplings shall be air-tight, water-tight, twist on or compression connector approved by the City. Coupling integrity shall be inspected by a City of Shafter Public Works Department representative.

e. Category 6 Unshielded Twisted Pair (CAT 6 UTP) cable (or as approved by the City) shall be installed according to industry standards and the requirements below and shall not be pinched, stapled, bent sharply or crossing any sharp, unprotected edges:

i. Install minimum of three (3) cables from the Utility Enclosure to the Media Enclosure.

ii. Install the following connection points terminated to a CAT 6-rated 8P8C (RJ-45) jack within a single-gang low voltage wall box, using the ANSI/TIA-568 T568A termination standard:

1. Minimum of two (2) connection points to every entertainment center, kitchen, master bedroom, kitchenette, office, den, etc.

iii. Install one (1) or more Wi-Fi Access Point (WAP) ceiling mounting locations (as approved by the City) on each floor such that no exterior wall is more than 30 feet from any WAP mounting location. Each WAP mounting location will include a single-gang, low voltage wall box through which a single CAT 6 UTP cable with a minimum three (3) feet of slack shall be terminated with a CAT 6-rated 8P8C (RJ-45) plug for connecting to a WAP.

Engineering Department Requirements

f. Developer shall design and install a system of conduits, terminal enclosures, distribution enclosures, splice enclosures, connection points, and hand holes for a fiber optic network to each buildable lot within the development. Design and material specifications are available from the City of Shafter. Plans shall be submitted and approved by the City of Shafter, prior to recordation of the final map, showing the proposed utility trench and all appurtenant hardware. The design shall include the following minimum specifications:

i. A combination of fiber optic conduits shall minimally include 4" SDR-11 HDPE, 2" SDR-11 HDPE, 7-Way bundled HDPE innerduct with attached tracer wire, and direct-bury HDPE microduct with attached tracer wire. Fiber optic conduits may be joint trenched with other utility company pipes and/or conduits.

ii. All underground fiber optic conduits, innerduct bundles, microducts, etc. shall be factory-labeled "City of Shafter 661-746-5000". Conduits shall be identified by a permanent marking, with the address number of the residence they serve, within the distribution enclosures.

iii. All underground fiber optic conduit paths shall have tracer wire. If the conduit does not have an integrated tracer wire, a continuous external #12 AWG solid-conductor tracer wire with high-density polyethylene insulation rated for direct burial shall be installed along with the conduit leaving a minimum 15-feet of slack coiled in the endpoint enclosures.

iv. The ends of all fiber optic conduits, innerducts, and microducts shall be plugged or capped to prevent dirt, debris, or foreign objects from entering.

v. After backfilling, all conduits shall be checked for obstructions, and re-excavated and repaired or replaced as required. All conduits ½-inch or larger shall require mule tape or equivalent installed. Mule tape shall be slack (no tension) and fastened to the plug or cap. Innerducts and microducts shall be mandrel tested while being witnessed by a City of Shafter Public Works Department representative.

vi. A combination of underground utility enclosures shall minimally include 36"W x 60"L x 36"D polymer concrete enclosures with dual torsion covers, 36"W x 36"L x 24-36"D and 24"W x 36"L x 24-36"D High Density Polyethylene (HDPE) enclosures.

vii. All underground utility enclosures shall be factory-stamped "City Fiber".

ARTICLE 8. FINANCING OF PUBLIC IMPROVEMENTS AND MAINTENANCE OBLIGATIONS

8.1 Landscape and Lighting Maintenance Community Facilities District. The City and the Owner agree to the formation of Communities Facilities District ("CFD") pursuant to the terms of Government Code Section 53311, et seq., the territory of which shall include the Project, for the purposes of the payment of maintenance and operation costs associated with the common landscaping and lighting located within the Project. Owner shall consent to the annexation of the formation of the CFD prior to recordation of the first final map for the Project or the first sale, transfer or conveyance of the Property or any portion thereof. The Owner further expressly agrees that failure of Owner to consent to the formation of such CFD will result in disapproval of any future tentative or final maps for the Project and will be cause for the City to terminate this Agreement.

The Owner also agrees that additional areas may be annexed into the CFD to be created pursuant to this Section 8.1; provided, however, that after giving effect to such annexation, the Owner is subject only to its fair share of the obligations and costs incurred as a result of the annexation. The Owner agrees to cooperate fully in any such annexation

proceedings.

If, for any reason whatsoever, the Property or portion thereof does not become part of a CFD as provided in this Section 8.1, or if any such CFD which is formed does not provide for the maintenance of the entirety of the landscaping and lighting within the Property, or any portion thereof, then Owner will provide for the creation of a private property owner's association, or an adequate alternative reasonably acceptable to the City, to undertake such work. The homeowner's association, conditions, covenants and restrictions (CC&R's) shall include a requirement that the homeowner's association pay the assessment and that the assessment provisions contained in the CC&R's can only be amended with the approval of the City. Failure to provide for the creation of such an owner's association, CC&R's and/or an adequate alternative reasonably acceptable to the City, when required by the terms of this Section 8.1 shall result in the disapproval of tentative or final maps or other Subsequent Development Approvals with respect to the Property, or any portion thereof, and shall be cause for the City to terminate this Agreement.

8.2 Police and Fire Protection Community Facilities District. The City and the Owner agree to the formation of a CFD pursuant to the terms of Government Code Section 53311, et seq., the territory of which shall include the Project, for the purposes of the payment and maintenance and operation costs associated with police and fire protection. Owner shall consent to the annexation of the formation of the CFD prior to recordation of the first final map for the Project or the first sale, transfer or conveyance of the Property or any portion thereof. The Owner further expressly agrees that failure of Owner to consent to the formation of such CFD will result in disapproval of any future tentative or final maps for the Project and will be cause for the City to terminate this Agreement.

The Owner also agrees that additional areas may be annexed into the CFD to be created pursuant to this Section 8.2; provided, however, that after giving effect to such annexation, the Owner is subject only to its fair share of the obligations and costs incurred as a result of the annexation. The Owner agrees to cooperate fully in any such annexation proceedings.

The Owner agrees that the Police and Fire Protection Community Facilities District may be formed as part of or separate from the Landscape Lighting and Maintenance Facilities District described in Section, at City's discretion.

ARTICLE 9. REVIEW FOR COMPLIANCE.

9.1 Periodic Review. The City Manager, or his or her designee, shall review this Agreement annually on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by Owner with the terms of the Agreement. Owner shall submit an Annual Monitoring Report, in a form acceptable to, and containing such information as may be requested by the City Manager, or his or her designee, within 30 days after written notice from the City Manager, or his or her designee. The Annual Monitoring Report shall be accompanied by an annual review and administration fee, in an

amount consistent with then-existing City fee schedules and resolutions, sufficient to defray the estimated costs of review and administration of the Agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the City Council. Neither City nor Owner shall have a duty to notify the other of their respective obligations hereunder and the City's failure to so conduct such annual reviews shall not affect the rights, protection, and benefits afforded Owner by the Development Agreement Law and this Agreement shall remain subject to the Development Agreement Law.

9.2 Special Review. The Planning Commission or City Council may order a special review of compliance with this Agreement at any time. The City Manager, or his or her designee, shall conduct such special reviews.

9.3 Procedure.

(a) During either a periodic review or a special review or at any time upon City's determination that Owner is in default of this Agreement as described in Section 10.4, Owner shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on Owner.

(b) Upon completion of a periodic review or a special review, the City Manager, or his or her designee, shall submit a report to the Planning Commission setting forth the evidence concerning good faith compliance by Owner with the terms of this Agreement and his/her recommended finding on that issue.

(c) If the Planning Commission finds on the basis of substantial evidence that Owner has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(d) If the Planning Commission makes a preliminary finding that Owner has not complied in good faith with the terms and conditions of this Agreement, the Planning Commission may recommend to the City Council that the City Council commence proceedings to modify or terminate this Agreement and the City Council may proceed to modify or terminate this Agreement under Section 9.4 and Section 9.5. Notice of default and opportunity to cure as provided under Section 10.4 of this Agreement shall be given to Owner prior to or concurrent with proceedings under Section 9.4 and Section 9.5.

9.4 Proceedings Upon Modification or Termination. If, upon a recommendation of the Planning Commission under Section 9.3(d), the City Council determines to proceed with modification or termination of this Agreement, the City Council shall give written notice to Owner of its intention so to do. The notice shall be given at least ten calendar days prior to the scheduled hearing and shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not the City Council proposes to terminate or to modify the Agreement; and the specifics of such modifications;

(c) Such other information as is reasonably necessary to inform Owner of the nature of the proceeding.

9.5 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, Owner shall be given an opportunity to be heard. Owner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on Owner. If the City Council finds, based upon substantial evidence, that Owner has not complied in good faith with the terms or conditions of the Agreement the City Council may terminate this Agreement notwithstanding any other provision of this Agreement to the contrary, or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

9.6 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, Owner is found to be in compliance with this Agreement, City shall, upon request by Owner, issue a Certificate of Agreement Compliance ("Certificate") to Owner stating that after the most recent Periodic or Special Review and based upon the information known or made known to the Planning Commission and City Council that (1) this Agreement remains in effect and (2) Owner is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the certificate is issued after a Periodic or Special Review, and shall state the anticipated date of commencement of the next Periodic Review. Owner may record the Certificate with the County Recorder.

Whether or not the Certificate is relied upon by assignees or other transferees of Owner, City shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the City Manager.

ARTICLE 10. DEFAULT AND REMEDIES.

10.1 Remedies in General. It is acknowledged by the parties that City would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that City shall not be liable in damages, including, without limitation, attorneys' fees and litigation costs, to Owner, or to any mortgagee or lender of Owner or to a successor in interest of Owner, or a mortgagee or lender of Owner, or to any other person, and Owner covenants not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or

(b) For the impairment or restriction of any right or interest conveyed or provided under, with, or pursuant to this Agreement, including, without limitation, any

impairment or restriction which Owner characterizes as a regulatory taking or inverse condemnation; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

Further, nothing contained herein shall modify or abridge Owner's rights or remedies (including its rights for damages, if any) resulting from the exercise by City of its power of eminent domain; provided, however, that such exercise results in a physical occupation of the Property or portion thereof. Except as set forth in the preceding sentence, Owner's remedies shall be limited to those set forth in this Section 10.1 and Sections 9.5 and 10.2.

10.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate, and specific performance and other non-monetary relief, including temporary and permanent injunction relief, are particularly appropriate remedies for the enforcement of this Agreement and should be available to all Parties for the following reasons:

(a) Money damages are unavailable against the City.

(b) Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have had to utilize the Property or portions thereof. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts; the parties acknowledge and agree that any injunctive relief may be ordered on an expedited, priority basis.

(c) Owner shall not be required to post a bond to obtain injunctive relief.

10.3 Release. Except for nondamage remedies and except as otherwise provided in this Agreement, including the remedy of specific performance and judicial review as provided for in Section 9.5, Owner, for itself, its successors and assignees, hereby releases the City, its officers, agents and employees from any and all claims, demands, actions, or suits or any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law, ordinance, or judicial decision which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

Without limiting the generality of anything in the immediately preceding paragraph, Owner, for itself and its successors and assigns, hereby expressly waives the benefit of, and any protections provided by Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In addition to waiving the provisions of California Civil Code section 1542, the Owner hereby waives, releases and foregoes the provisions of any federal or state statute or judicial decision of similar effect.

10.4 Termination or Modification for Default of Developer. City may terminate or modify this Agreement for any failure of Owner to perform any material duty or obligation of Owner under this Agreement as provided in Article 6 hereof, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, City may terminate or modify this Agreement pursuant to this Section in accordance with Article 6 hereof only after providing written notice to Owner of default setting forth the nature of the default and the actions, if any, required by Owner to cure such default and, where the default can be cured, Owner has failed to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default.

10.5 Termination of Agreement for Default of City. Owner may terminate this Agreement only in the event of a default by City in the performance of a material term of this Agreement and only after providing written notice to City of default setting forth the nature of the default and the actions, if any, required by City to cure such default and, where the default can be cured, City has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

ARTICLE 11. THIRD PARTY LITIGATION.

11.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, and that the General Plan meets all requirements of law. Owner has reviewed the General Plan and concurs with City's determination. City shall have no liability under this Agreement for any failure of City to perform under this Agreement or the inability of Owner to develop the Property as contemplated by the Development Plan, which failure to perform or inability to develop is as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law, or that this Agreement or any of City's actions in adopting it were invalid, inadequate or not in compliance with law.

11.2 Third Party Litigation Concerning Agreement. Owner shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless City, its agents, officers and employees from any claim, action or proceeding against City, its agents, officers or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement. City shall promptly notify Owner of any such claim, action or proceeding, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action or proceeding, or if City fails to cooperate in the defense, Owner shall not thereafter be responsible to defend, indemnify or hold harmless City. City may in its discretion participate in the defense of any such claim, action or proceeding.

11.3 Indemnity. In addition to and not as a limitation upon the provisions of Sections 11.1 and 11.2 above, Owner shall indemnify, defend and hold harmless City, its officers, agents, employees and independent contractors free and harmless from all liability whatsoever, based or asserted upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury or death (Owner's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder including, but not limited to, the design, engineering, construction, completion, operation, maintenance, repair, failure, conveyance or physical condition of the Public Improvements.

The foregoing obligation shall not apply to any claims for damages which arise through the sole active negligence or sole willful misconduct of City. Owner shall defend, at its sole cost, expense and liability, including attorneys' fees, City, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions of Owner. City may, in its discretion, participate in the defense of any such legal claim, action or proceeding and shall be entitled to reimbursement from Owner for any and all costs associated with such defense including, without limitation, reasonable attorneys' fees.

11.4 Environmental Contamination. Owner shall indemnify and hold City, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of Owner, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors, excepting any acts or omissions of City as successor to any portions of the Property Dedicated or transferred to City by Owner, for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including attorneys, fees, City, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such claim, action or proceeding.

11.5 City to Approve Counsel. With respect to Sections 11.1, through 11.4, inclusive, herein, City reserves the right to either (1) approve the attorney(s) which Owner selects, hires or otherwise engages to defend City hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense; provided, however, that Owner

shall reimburse City forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

11.6 Accept Reasonable Good Faith Settlement. With respect to Sections 11.1 through 11.4, inclusive, City shall not reject any reasonable good faith settlement. If City does reject a reasonable, good faith settlement that is acceptable to Owner, Owner may enter into a settlement of the action, as it relates to Owner, and City shall thereafter defend such action (including appeals) at its own cost and be solely responsible for any judgments rendered in connection with such action. This Section 11.6 applies exclusively to settlements pertaining to monetary damages or damages which are remedial by the payment of monetary compensation. Owner and City expressly agree that this Section 11.6 does not apply to any settlement which requires an exercise of the City's police powers, limits the City's exercise of its police powers, or affects the conduct of the City's municipal operations.

11.7 Survival. The provisions of Sections 11.1 through 11.6 inclusive, shall survive the expiration or early termination of this Agreement.

11.8 No Waiver of Common Law or Statutory Obligations. City and Owner acknowledge and agree that this Agreement shall not constitute a waiver or abridgement of any common law or statutory obligations which Owner may have with respect to indemnification, defense and contribution in the event that any action or proceeding is commenced against City which is based upon this Agreement or which is in any way related to any actions taken by Owner pursuant to this Agreement.

ARTICLE 12. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement, provided, further, that any modifications of this Agreement are subject to the provisions of Section 5.5 of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written

notification from City of any default by Owner in the performance of Owner's obligations under this Agreement.

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

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Owner's obligations or other affirmative covenants of Owner hereunder, or to guarantee such performance. However, to the extent that the performance of such covenant by Owner is a condition precedent to the performance of any act by the City, the City shall have no obligation to perform such act hereunder unless and until the Mortgagee performs the covenant of Owner which is the condition precedent to the City's performance. Although a Mortgagee is not obligated to perform the obligations and covenants of Owner hereunder, if the Mortgagee elects to so perform, such performance shall be in full accordance with the terms of this Agreement. Any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 5.4 of this Agreement.

ARTICLE 13. MISCELLANEOUS PROVISIONS.

13.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the Kern County Recorder by the City Clerk within the period following the Operative Date as required by Section 65868.5 of the Government Code.

13.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

13.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in ARTICLE 7 of this Agreement, including the payment of the fees set forth therein, are essential elements of this Agreement and City would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and

effect whatsoever. Notwithstanding the foregoing, the development rights set forth in Section 6 of this Agreement are essential elements of this Agreement and Owner would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

13.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

13.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

13.6 Singular and Plural. As used herein, the singular of any word includes the plural.

13.7 Joint and Several Obligations. If at any time during the term of this Agreement any part of the Property is jointly owned, in whole or in part, by more than one owner, all obligations of such owners under this Agreement as to that portion of the Property jointly owned shall be joint and several, and the default of any such owner shall be the default of all such owners. Notwithstanding the foregoing, no owner of a single lot which has been finally subdivided and sold to such owner as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as provided herein.

13.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

13.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

13.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

13.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), the other party's breach of this Agreement, or other causes beyond the party's control. If any such

events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder may be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years. The failure of either party to obtain or maintain financing necessary for the performance of its respective obligations and duties hereunder shall not be deemed a cause for an extension of the term of this Agreement or a cause for the extension of time for performance of any such obligation by any party hereunder unless mutually agreed to by the parties in writing.

13.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefitted thereby of the covenants to be performed hereunder by such benefitted party.

13.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each party and each successor in interest during Ownership of the Property or any portion thereof.

13.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

13.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Bernardino, State of California. Each Party hereto irrevocably consents to the personal jurisdiction of that court. The City and the Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between the City and the Owner, due to the fact that the City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, the Owner and the City specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. The Owner acknowledges that the provisions of this Section 13.15 are material consideration to the City for its entry into this Agreement, in that the City will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

13.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder,

and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the Owner of such property.

13.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. The provisions of this Section 13.17 shall not require the taking of any actions which are prohibited by law or, except as expressly set forth in this Agreement, including, without limitation, Section 6.7, impair the lawful legislative discretion of the City as to those matters to which the law imparts legislative discretion to the City.

13.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

13.19 Agent for Service of Process. In the event Owner is not a resident of the State of California or is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or is a foreign corporation, then in any such event, Owner shall file with the City Manager or his or her designee, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon Owner. If for any reason service of such process upon such agent is not feasible, then in such event Owner may be personally served with such process out of this County and such service shall constitute valid service upon Owner. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained, and waives any and all objections and protests thereto.

13.20 Authority to Execute. The person or persons executing this Agreement on behalf of Owner warrants and represents that he/she/they have the authority to execute this Agreement on behalf of his/her/their corporation, partnership or business entity and warrants and represents that he/she/they has/have the authority to bind Owner to the performance of its obligations hereunder.

13.21 Subsequent Amendment to Authorizing Statute. This Agreement has been entered into in reliance upon the provisions of the statute governing development agreements (Sections 65864 through 65869.5 inclusive) in effect as of the Effective Date. Accordingly, subject to Section 6.5 above, to the extent the subsequent amendment to the

Government Code would affect the provisions of this Agreement, such amendment shall not be applicable to the Agreement unless necessary for this Agreement to be enforceable.

13.22 No Personal Obligation/No Completion Obligation. This Agreement in and of itself does not represent a personal obligation of individual officers, directors, and shareholders of Owner, its successors or assigns. Nothing herein contained shall in and of itself be deemed to create an obligation of the Owner, its successors or assigns to complete the development of the entire Project as contemplated, or any particular portion thereof. No officer, official, employee, agent, contractor or attorney of the City shall have any personal liability or obligation for the performance of the City's obligations hereunder.

SIGNATURE PAGE TO
TENTATIVE TRACT NO. 6490 DEVELOPMENT AGREEMENT NO. 21-20

CITY:

CITY OF SHAFTER
a California municipal corporation

By: 
Mayor, City of Shafter

ATTEST:


City Clerk


City Manager

**APPROVED AS TO LEGAL FORM:
BEST BEST & KRIEGER LLP**

By: _____
City Attorney

SIGNATURE PAGE TO
TENTATIVE TRACT NO. 6490 DEVELOPMENT AGREEMENT NO. 21-20

OWNER

Summit Capital Ventures, Inc.
8725 Swigert Court
Bakersfield, CA 93311

By:  _____

Its: Chief Financial Officer

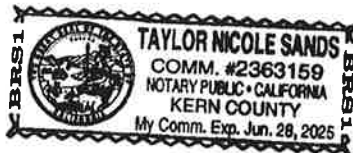
Dated: 3/3/2022

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF KERN)ss.
)

On 3/3/2022, before me, Taylor Nicole Sands, a Notary Public, personally appeared Greg Balfanz, 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 forgoing paragraph is true and correct.



WITNESS my hand and official seal.

TN
Notary Public

**EXHIBIT "A" TO
TENTATIVE TRACT NO. 6490 DEVELOPMENT AGREEMENT NO. 21-20**

Legal Description of Property

EXHIBIT "A"

TRACT 6490

LEGAL DESCRIPTION

BEING A DIVISION OF LOT 13 AND A PORTION OF THE WEST HALF OF LOT 14 OF SALES MAP OF LANDS OF KERN COUNTY LAND COMPANY IN SECTION 15, TOWNSHIP 28 SOUTH, RANGE 25 EAST, MOUNT DIABLO BASE AND MERIDIAN, FILED FEBRUARY 11, 1913 IN THE OFFICE OF THE KERN COUNTY RECORDER, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 13;

THENCE, NORTHERLY ALONG THE WEST LINE OF SAID LOT 13, NORTH 01°24'18" EAST A DISTANCE OF 1,319.86 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID LOT 13;

THENCE, EASTERLY ALONG THE NORTH LINE OF SAID LOT 13, SOUTH 89°03'48" EAST A DISTANCE OF 660.47 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID LOT 13;

THENCE, CONTINUING SOUTH 89°03'48" EAST A DISTANCE OF 310.23 FEET, MORE OR LESS, ALONG THE NORTH LINE OF SAID LOT 14 TO A POINT OF INTERSECTION WITH THE WEST LINE OF A WATERLINE EASEMENT DEDICATED TO THE UNITED STATES OF AMERICA PER INSTRUMENT 17472, BOOK 2581, PAGE 194 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WEST LINE ALSO BEING THE WEST LINE OF THE EAST 20 FEET OF THE WEST HALF OF SAID LOT 14;

THENCE, LEAVING SAID NORTH LINE, SOUTH 01°23'01" WEST ALONG SAID WEST LINE A DISTANCE OF 1,319.98 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF SAID LOT 14;

THENCE, WESTERLY ALONG THE SOUTH LINE OF SAID LOT 14, NORTH 89°03'22" WEST A DISTANCE OF 310.40 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID LOT 14;

THENCE, WESTERLY ALONG THE SOUTH LINE OF SAID LOT 13, NORTH 89°03'22" WEST A DISTANCE OF 660.80 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

CONTAINING 29.42 ACRES GROSS, MORE OR LESS.


JASON VAN CUREN, PLS 7439

23.2022
Date



**EXHIBIT "C" TO
TENTATIVE TRACT NO. 6490 DEVELOPMENT AGREEMENT NO. 21-20**

LIST OF EXISTING DEVELOPMENT APPROVALS

- 1.) City of Shafter Resolution No. 05-1727 for Tentative Tract No. 6490

**EXHIBIT "D" TO
TENTATIVE TRACT NO. 6490 DEVELOPMENT AGREEMENT NO. 21-20**

**RESOLUTION NO. 05-1727
CONDITIONS OF APPROVAL**

TENTATIVE TRACT NO. 6490
CONDITIONS OF APPROVAL
(As Approved by City Council 5/3/05)

GENERAL

1. The developer(s) (hereinafter referred to as "Developer"), at their sole cost and expense, shall defend, indemnify and hold harmless the City of Shafter (hereinafter referred to as "City"), its agents, legislative body, officers and employees in any legal or administrative action, claim or proceeding concerning approval of Tentative Tract No. 6490 (hereinafter referred to as "TT 6490") or, at its election and in the alternative, shall relinquish such approval. Developer shall assume the defense of the City in any such legal or administrative action, claim or proceeding with legal counsel paid for in the entirety by Developer, but subject to the City's reasonable approvals. Developer shall also reimburse the City, its agents, legislative body, officers and employees for any judgments, amounts paid in settlements, court costs and attorneys' fees which the City, its agents, legislative body, officers and employees may be required to pay at court as a result of such action, claim, or proceeding. The City may, at its sole discretion, participate at its own expense in the defense of any such action, claim or proceeding, but such participation shall not relieve Developer of their obligations under this condition.
2. The following disclosure shall be given as part of transfer of properties: "If your real property is near property used for agricultural operations, you may be subject to inconveniences or discomforts arising from such operations on any 24 hour basis. Said discomforts may include, but not be limited to equipment noises, odors from manure or other chemicals, and dust or smoke. The City has determined that the use of real property for agricultural operations is a high priority and favored use to the City and Kern County and will not be considered a nuisance for those inconveniences or discomforts arising from agricultural operations, provided such operations are consistent with accepted customs, standards, and laws."
3. Developer, or the general contractor, shall submit a list of all contractors and/or subcontractors performing work on TT 6490 to the City Administrative Services Department and such contractors and subcontractors shall obtain valid business licenses to do business and/or work in the City.
4. Until all portions of TT 6490 have been completed, all vacant and undeveloped land shall be maintained within the boundaries of TT 6490 in a weed-free and clean and orderly manner by Developer. Should said property not be so maintained, the City shall notify property owner that the property is to be cleaned within thirty days of receipt of said notice. If property owner does not comply within the required time frame, City may then clear the land and bill property owner for expenses incurred.
5. TT 6490 shall expire twenty-four months from the date of approval by the City Council, unless an extension is granted by the City Council. Should an extension be requested, the applicant, not less than sixty days prior to the expiration date, shall submit to the City in writing, a request for an extension of that approval in accordance with the provisions of City Codes.

6. Developer shall pay all development fees and impact fees adopted by the City in effect at the time of issuance of any building permits.
7. Developer shall comply with the latest Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, National Electrical Code, Uniform Fire Code and all other applicable codes, ordinances, regulations, and development standards in effect at the time of issuance of relative permits.

PLANNING

8. TT 6490 shall conform to the in-lieu park fee measures (Quimby Act) of the City of Shafter. Said fees shall be paid prior to recordation of the Final Map.
9. In lieu of the construction of alleys, Developer shall pay refuse capacity fee as required by Ordinance No. 351. Refuse capacity fee shall be due and payable prior to recordation of a Final Map.
10. Prior to recordation of Tract Map No. 6490, the developer shall enter into a development agreement with the City of Shafter, in a form and substance reasonably approved and required by the City, which shall provide for a minimum square footage of residential units within the subdivision, and which shall provide for payment of park fees, traffic fees and other fees established by the City. In the event that the City has not adopted such fees in a timely manner such that the developer would have to make payment at the time of obtaining each building permit for development of the subdivision, then the developer and the City agree that park fees shall be a minimum of \$650 per lot and traffic fees shall be a minimum of \$2,346 per lot, and that such fees represent the actual costs pertaining to park and recreation and traffic impacts proportional to and directly related to each lot. Such fees shall be paid regardless of whether the developer and the City enter into a development agreement. In addition, the developer shall cooperate with the City regarding the establishment and formation of a community facilities district for school purposes, and the developer shall require all successors in interest in and to the subdivision, and each portion thereof, to cooperate with the City in the establishment of such a district. For this purpose, the developer and its successors in interest shall not object or participate in any protest regarding the formation of such a district, and shall affirmatively vote "yes" with respect to all real property within the subdivision for purposes of establishing such a district.
11. Prior to issuance of each building permit for houses within TT 6490, Developer shall submit a site plan to the City Planning Department for review and approval. The site plan shall reference the floor plan layout and building elevations, including exterior building materials and colors, for each of the single-family residences to be constructed within TT 6490. All architectural features of each single-family residence and all landscaping requirements set forth in Section 2.80, Chapter 2, Title 17 of the Shafter Municipal Code (Design Review) shall be adhered to. All roofs constructed within TT 6490 shall be of concrete tile or Prestique I High Definition manufactured by ELK Corporation in Shafter, its equivalent, or better.

Developer may request approval to substitute equivalent housing plans in lieu of any of the plans provided as part of the application for TT 6490. The City's Project Assistance Team shall determine, in the exercise of its reasonable discretion, whether a proposed substitute is equivalent to the corresponding floor plan and elevation previously provided as a requirement of Section 2.80, Chapter 2, Title 17 of the Shafter Municipal Code. At a minimum, however, the proposed equivalent plan must be of the same or greater size than the plan it is intended to replace within TT 6490.

12. Developer shall submit a conceptual landscaping plan for all publically maintained landscaping to the Planning Department for approval prior to recordation of the Final Map, or first phase of the Final map.
13. All roof-mounted air conditioning equipment shall be located on the rear portion of the roof ridge line in such a manner as to be screened as much as practical from view from public streets.
14. With the exception of model houses, as provided in Section 3.080, Chapter 3, Title 16 (Subdivision Ordinance) of the Shafter Municipal Code, no building permit shall be issued by the City until TT 6490 has been recorded pursuant to the requirements of Title 16 (Subdivision Ordinance) and Title 17 (Zoning Ordinance) of the Shafter Municipal Code.
15. Prior to recordation of Tract 6490, the subdivider shall remove "Christopher Street", "Evelyn Ct.", and "Lisa Street" from the map and remove Kathleen Street from the list of alternative streets. The 911 Coordinator did not approve those three street names and one alternative street name. The applicant should substitute the remaining two alternative street names for two of the disapproved street names on the map and provide 3-4 additional street names to staff so those street names can be submitted to the 911 coordinator for review and approval. New street names must be submitted to staff and reviewed prior to recordation of TT6490.
16. All requirements of Section 2.80.6 (Residential Subdivision Land Use Design Criteria)of the City's Zoning Ordinance shall be met.
17. In order to reduce potential noise impacts from the BNSF Railroad to the subject subdivision, the applicant shall construct a six (6) foot high masonry block wall along the northern and eastern perimeter of TT 6490. This is a mitigation measure identified in the Negative Declaration for this project.

BUILDING

18. Private drives constructed of Portland cement-concrete shall be constructed at a minimum width of 16 feet from the edge of public roadway pavement to the garage of each house.
19. Prior to permitting occupancy of any lot, building addresses shall be permanently installed and clearly visible from the street.
20. Prior to recordation of Tract 6490, developer shall relocate telephone poles along the north side Los Angeles Avenue in conformance with the appropriate utility company requirements.

ENGINEERING: GENERAL

21. Developer shall remove and replace any existing public or private improvements that may become damaged during any phase of construction, as required by the City Engineer. The contractor working within the public right-of-way shall obtain an encroachment permit from the City Engineer prior to commencing any such work.
22. Developer shall relocate and/or install all necessary infrastructure to provide utilities to the proposed project.
23. A six (6) foot public utility easement shall be provided in the front of all lots and on the street side of all corner lots as requested by the utility companies and the City Engineer. Easements shall be granted with the final map.
24. Easements to be given to the City or any other public utility agency for, sewer, water, storm drain, electrical, or any other utility or similar purpose shall not cross private property without prior approval of the City Engineer.
25. Any above ground utility cabinets or facilities to be located within the road right-of-way or public utility easement shall be permitted only upon approval by the City Engineer. Such approval will be made in writing, upon written request of the applicant and/or the affected utility company.
26. Any obstructions including utilities, irrigation lines, etc., shall be removed and/or relocated, if necessary, at the expense of the applicant.
27. Any onsite wells shall be abandoned per Kern County standards.
28. No final inspection shall be approved until all required improvements have been completed by the applicant and accepted by the City.
29. All new utilities shall be underground service.
30. During construction, vehicular access points shall be covered with decomposed granite, road oil, or some other treatment acceptable to the City Engineer, to prevent generation of dust during periods of vehicular activity and/or windy conditions and tracking of mud and dirt on public roadways.
31. Prior to issuance of a certificate of occupancy on any lot of the proposed tract, all required improvements shall be completed and accepted by the City Council. Additional improvement outside the affected project boundary may be required for orderly development as determined by the City Engineer.
32. All improvements shall be complete within one (1) year from the date of filing of the final map for the development, unless a time extension is granted by the City Engineer.

33. Type & location of centralized mail delivery units shall be determined by the postal service. If the postal service requires special easements for the placement of the delivery units, then said easements shall be shown on the final map.

ENGINEERING: GRADING & DRAINAGE

34. Prior to review of any required improvement plans, both a drainage/hydrology study and a grading plan shall be submitted to and approved by the City Engineer.
35. The drainage/hydrology study and hydraulic analysis for the project shall be performed by a registered civil engineer and submitted to the City Engineer for review and approval. The study shall demonstrate that any potential run-off will not impact surrounding properties. The study shall focus on the project property and any affected adjacent properties.
36. The grading plan for the project shall be performed by a registered civil engineer and submitted to the City Engineer for review and approval. All grading shall conform to the California Building Code, latest edition, approved by the City and City adopted standards and specifications. Storm drainage protection and disposal of water into and from the affected property shall be by method approved by the City Engineer.
37. A soils report, prepared by a registered civil engineer shall be submitted along with the grading plan. Soils report shall be performed in compliance with California Building Code, Chapter 18, latest edition. In addition, all site grading, earthwork, & building design shall be performed in accordance with the recommendations of the soils report.
38. A grading permit shall be obtained from the City prior to commencement of any grading activity.
39. Prior to issuance of a building permit, the developer shall file a "Rough Grade Certificate" with the City in accordance with the City Engineering & Design Standards. Rough Grade Certificate shall be accompanied by certified soil compaction test data from an acceptable materials testing company and a certification that the rough graded in substantial conformance with the approved grading plan and Chapter 33 of the California Building Code. Developer to obtain Rough Grade Certificate form from the City.
40. Prior to final approval, acceptance of work, or issuance of certificate of occupancy, the applicant's engineer shall file a "Final Grade Certificate" stating that all required grading has been done in accordance with the approved grading plan. Developer to obtain Final Grade Certificate form from the City.
41. The location & frequency of soils compaction testing shall be per the City Engineer. Soils compaction testing shall be provided by the developer/owner.
42. Minimum slopes across any flat surface shall be 1%. For slopes less than 1%, surface drainage shall be channeled into a concrete v-gutter, curb & gutter, underground storm drain, or similar drainage structure.

43. All building pads shall provide a minimum of 2% slope away from each house to a earth swale, and a minimum of 1% from the highest point in the swale to the street. The minimum pad height shall be twelve (12) inches above the adjacent curb.
44. Street side corner lots shall not have their side yard slope (finish grade to back of sidewalk) exceed 4 horizontal:1 vertical. If maximum slope is exceeded, side yard shall be retained in an approved manner.
45. Wood retaining structures shall not be approved. Developer shall use masonry, concrete, or other approved material.
46. Drainage basin: The development is located within an established drainage area, and a regional sump has already been constructed for the development. The developer shall construct a storm drain from the subdivision to the regional sump or the closest tie-in. Size of storm drain pipe shall be approved by the City Engineer. The City shall require as a condition to future land use approvals for nearby properties benefitting from the developer's construction of such storm drain, that all such property owners reimburse the City and/or the developer (and if the City is reimbursed, then it shall remit payment to the developer) for all reasonable costs incurred by the developer to engineer, obtain permits, and construct the storm drain facilities outside the boundaries of Tract 6490, all subject to the requirements of and otherwise as permitted by law. It shall be the responsibility of the City of Shafter to prepare the necessary reimbursement agreement to accomplish this condition.
47. The number and location of street based siphons and cross gutters allowed, if any, will be determined during the grading and drainage review process. The minimum grade for allowed cross gutters shall be 0.6%.
48. Grading onto adjacent property shall not be done without written permission from the adjacent property owner.
49. The Office of the City Engineer shall be notified 24 hours in advance of the placement of any fill material.
50. Fill and/or import material shall be subject to the approval of the soils engineer.
51. Contractor is responsible for the grading of lot pad areas to within 0.1' of the design elevations.
52. All areas in the site on which structures are to be placed must be compacted to 90% relative density, for a minimum distance of 5' in all directions from the foundations of the structure.
53. All fill material shall be moisture conditioned to at least 2% above optimum moisture and compacted to 90% relative density, as determined by test methods referenced in California Building Code, appendix Chapter 33, Section 3305, and so certified by tests and report from the soils engineer.

54. The design engineer shall exercise sufficient supervisory control during grading operations to insure compliance with the plans, specifications, and code within his purview.
55. The placement of fill shall be in 6" maximum lifts, compacted with heavy compaction equipment approved by the City Engineer, unless specifically recommended otherwise in the preliminary soils report.
56. Compaction in proposed pavement areas should be the same as for the building pads, and should extend to a minimum distance of 2' beyond the outside edges of pavements.
57. All cut and fill slopes shall not be steeper than 2 horizontal to 1 vertical.
58. All fill areas to be cleared of all vegetation and other unsuitable material for a structural fill and the areas shall be scarified to a depth of 6", unless specifically noted otherwise in the preliminary soils report.
59. All slopes in excess of three feet shall be prepared and maintained to control against erosion.
60. Grading work shall be supervised as engineered grading in accordance with Chapter 33 of the California Building Code.
61. During grading, reasonable searching should be performed for concealed subsurface obstructions. All abandoned subsurface obstructions should be removed. If the terminus of any abandoned piping is outside the project limits, the piping should be removed within the project and properly capped at the project boundary.
62. Dust Control: It shall be the developer's responsibility to prevent a dust nuisance originating from the site of work as a result of his operations during the effective period of this contract. Preventative measures to be taken by the contractor shall include but not be limited to the following;
 - (a.) Water shall be applied to all unpaved areas as required to prevent the surfaces from becoming dry enough to permit dust formation.
 - (b.) Paved surfaces over which vehicular traffic is permitted to travel shall be kept free of dirt.

ENGINEERING: WATER/FIRE

63. Developer shall install a water system for the development together with such equipment, pipeline, and facilities, including individual water services, as may be necessary to ensure the development has a minimum supply of water for the purposes of the development including fire protection. Developer shall submit water improvement plans to the City Engineer for review and approval. Developer shall construct public water systems in accordance with Subdivision Engineering Design Manual for the subject property.
64. Fire protection shall be provided per Kern County Fire Department Standards for the type of development. A Certificate of Approval shall be obtained by the applicant from the Kern County Fire Department. Evidence of this certificate of approval shall be provided to the City prior to acceptance of the water system by the City.

65. The City Engineer shall recommend hydrant type and location if required.
66. Water line size, location, and materials shall be subject to the approval of the City Engineer. Minimum water line size shall be in accordance with the Subdivision Engineering Design Manual.
67. Tie-ins to existing water mains shall be constructed in a manner approved by the City Engineer.
68. Whenever possible, the water system shall be looped to minimize dead ends. For cul-de-sacs greater than 330 feet in length, the water main shall be looped through the side lot lines, of the lots near the end of the cul-de-sac, back to adjacent streets, as directed by the City Engineer. Easements shall be provided to the City in a manner consistent with the Subdivision Engineering & Design Manual.
69. Separate water services shall be installed for each residential property.
70. No permanent structures shall be constructed over proposed or existing utility easements.
71. Prior to the issuance of a building permit, water mains and fire hydrants to be installed by applicant shall be completed, tested, and accepted (UFC 10.502,10.503)

ENGINEERING: SEWER

72. Developer shall install a sewer system for the development together with such materials, pipeline, manholes, and individual services for the purposes of the development. Developer shall submit sewer improvement plans to the City Engineer for review and approval. Developer shall construct public sewer systems in accordance with Subdivision Engineering Design Manual for the subject property.
73. No properties shall be served by a septic system.
74. Sewer line size, location, slope, and materials shall be subject to the approval of the City Engineer. Minimum sewer line size, location, slope, and materials shall also be in accordance with the Subdivision Engineering Design Manual.
75. Tie-ins to existing sewer mains, manholes, or other structure shall be constructed as directed by the City Engineer.
76. Separate sewer services shall be installed for each property. At no time shall sewer be joint trench with water.
77. Sewer lines will not be permitted in easements between the back yards or side yards of single or multi-family lots.
78. No permanent structures shall be constructed over proposed or existing utility easements.

ENGINEERING: STREET & TRAFFIC

79. Developer shall construct and provide right of way for all streets, curb, gutter, cross gutter, drainage facilities, sidewalks, street lights, drive approaches, intersections, and other related improvements for the purposes of the development. Developer shall submit street improvement plans prepared by a registered civil engineer to the City Engineer for review and approval and shall include:
- (a.) preliminary soils report - including R values taken from proposed road locations and infiltration tests taken from any proposed basin site(s);
 - i.) At least two (2) R-value tests will be taken for Los Angeles Avenue, one (1) for Mannel, one (1) for East Ash Avenue, and three (3) for local interior streets dedicated for the development.
 - (b.) preliminary engineer's estimate of construction costs; and
 - (c.) plan check and inspection fees.
80. The drawings shall include all proposed public street pavement, curb, gutter, driveways, streetlights, cross gutter, catch basins, striping, signage, traffic signals, and sidewalks along the perimeter of all streets adjacent to or within the project site. Said improvement shall be constructed as per the street improvement plans approved by the City Engineer in a manner consistent with the Subdivision Engineering Design Manual.
81. Street Sections:
- (a.) Pavement structural section calculations shall be performed to verify the proposed structural sections and shall be submitted to and approved by the City Engineer with street plans. Calculations shall use the results of the R-value tests from the soils report.
 - (b.) The minimum allowable structural section for Los Angeles Avenue shall be 0.25 feet of Asphalt Concrete (3/4" AR-4000) over 0.50 feet of Class II Aggregate Base over 1.0 feet native material moistened and compacted to city standards. Traffic Index = 6.0.
 - (c.) The minimum allowable structural section for Mannel Avenue shall be 0.21 feet of Asphalt Concrete (3/4" AR-4000) over 0.42 feet of Class II Aggregate Base over 1.0 feet native material moistened and compacted to city standards. Traffic Index = 5.0.
 - (d.) The minimum allowable structural section for East Ash Avenue shall be 0.21 feet of Asphalt Concrete (3/4" AR-4000) over 0.42 feet of Class II Aggregate Base over 1.0 feet native material moistened and compacted to city standards. Traffic Index = 5.0.
 - (e.) The minimum allowable structural section for all local interior streets shall be 0.17 feet of Asphalt Concrete (1/2" AR-4000) over 0.33 feet of Class II Aggregate Base over 1.0 feet native material moistened and compacted to city standards. Traffic Index = 4.0
 - (f.) Minimum cross slope shall be 1.5% constructed. A minimum of 2% cross slope shall be designed and shown on plans.

82. Street Dimensions:

- (a.) Los Angeles Avenue shall be developed as a Major Collector along the entire property line of the subject property, in accordance with standards and specifications of the City as approved by the City Engineer. Developer shall be responsible for developing the north half of Los Angeles Avenue as follows:
 - i.) Los Angeles Avenue shall be forty-six (46) feet half right of way with thirty-four (34) feet centerline to flowline.
 - ii.) Portions of the existing cold mix/oil sand road shall be demolished and Los Angeles Avenue shall be reconstructed to its centerline. Demolition & construction beyond the centerline of Los Angeles may be necessary if existing road profile will not accommodate new construction.
- (b.) Mannel Avenue shall be developed as a modified local street along the entire property line of the subject property, in accordance with standards and specifications of the City as approved by the City Engineer. Developer shall be responsible for developing the east half of Mannel Avenue as follows:
 - i.) Mannel Avenue shall be thirty-four (34) feet half right of way with twenty (20) feet centerline to flowline.
 - ii.) Developer shall pave a minimum of 26' from flowline to west edge of paving in order to provide a minimum of 24' of paving necessary for two way traffic. Crown shall be placed at the centerline.
- (c.) East Ash Avenue shall be developed as a modified local street along the entire property line of the subject property, in accordance with standards and specifications of the City as approved by the City Engineer. Developer shall be responsible for developing the south half of East Ash Avenue as follows:
 - i.) East Ash Avenue shall be thirty-eight (38) feet half right of way with twenty-five (25) feet centerline to flowline.
 - ii.) The location and establishment of the centerline of East Ash Avenue shall be governed by the specific plan per City of Shafter Resolution 704. Certified copies are available upon request.
 - iii.) Developers attention is also directed to portions of these conditions entitled: **East Ash Avenue, Mannel Avenue, & State Hwy 43 (Central Valley Hwy)**
- (d.) All local streets shall be developed as full width streets in accordance with standards and specifications of the City as approved by the City Engineer. All local streets shall be fifty-two (52) feet full right of way with forty (40) feet flowline to flowline.

83. East Ash Avenue & State Hwy 43 (Central Valley Hwy)

- (a.) In order to promote the orderly development of the area, each of the three developments listed below shall enter into an agreement *(in a form acceptable to the City of Shafter)* for required street improvements. Said agreement *shall be prepared by the property owners identified below, and* shall ensure that the costs to engineer, design, and construct all required street improvements are distributed fairly among all affected developments, providing an equitable proration of the improvements.

- (b.) Developments required to enter into an agreement shall be:
 - i.) Developer for Tract 6490
 - ii.) Developer for Parcel 1 of Parcel Map 10996 (Las Rosas Apartment Complex)
 - iii.) Developer for Parcel 2 of Parcel Map 10996 (Single Family Residential)
- (c.) Required street improvements shall be any street improvements required by state or local agency for the following streets:
 - i.) Mannel Avenue from East Ash Avenue south to Los Angeles Avenue.
 - ii.) East Ash from Mannel Avenue east to State Hwy 43.
 - iii.) Any improvements required by state agency within State Hwy 43.
- (d.) Design & construction of all required street improvements, including any intersection with State Hwy 43 shall be permitted and approved by the City of Shafter and the California Department of Transportation (Caltrans), where applicable.

The above condition represents a mitigation measure contained in the Negative Declaration for this project.

- 84. Should a street transition to another street with a ninety (90) degree turn occur, that transition shall be a street knuckle and shall be shown on the final tract map and in the street improvement plans.
- 85. Cul-de-sac and street knuckle dimensions & radii to conform to the Subdivision Engineering Design Manual and/or the City Engineer. The use of offset cul-de-sacs is approved provided they meet the requirements of the City.
- 86. The following streets shall be striped in accordance with the City Engineer and Caltrans Traffic Manual, latest edition. Proposed striping shall be shown on street plans.
 - (a.) Los Angeles Avenue
 - (b.) Mannel Avenue
 - (c.) East Ash Avenue
- 87. Street signs shall be installed per City standards as required by the City Engineer.
- 88. All utilities proposed under paving shall be installed prior to paving. Cover over utilities shall be a depth as approved by the City Engineer.
- 89. During construction, the applicant shall maintain the project, including adjacent streets in a dust free condition. This condition applies at all times including weekends, evenings and night time hours. During construction operations, cleanup of soil from the public roadways shall be required, if deemed necessary, by the City Engineer.
- 90. Driveway approaches shall be constructed in a manner consistent with the requirements for residential approaches as set forth in the City's Subdivision and Engineering Design Manual.

91. Sidewalk, including curb, shall be five (5) feet wide and shall be placed behind the curb on all streets. Transitions at intersections and wheelchair ramps shall be provided and installed per City's Subdivision and Engineering Design Manual.
92. Monument and monument covers shall be set per City Standards.
93. Temporary turnarounds, if required, including right of way, shall be granted, designed, & installed per the Subdivision and Engineering Design Manual.
94. Property line locations shall be marked with a chiseled line on the top of curb for all property lines. The location of all sewer laterals shall be indicated on the top of curb with a stamped "S".
95. Street lighting shall be installed in accordance with the City Engineering & Subdivision Design Manual as directed by the City Engineer. Developer shall coordinate with Pacific Gas & Electric to ensure that the street lights are established under the LS-2B rate schedule.
96. Secondary access easements shall be provided at the request of the City Engineer. Within any given phase of development, secondary access easements and improvements shall be provided in a manner approved by the City Engineer. Access roads shall be twelve (12) feet in width and shall consist of three (3) inches of class II aggregate base over six (6) inches of native material compacted to 90% relative maximum density.
97. A waiver of direct access shall be dedicated and shown on the final map as follows:
 - (a.) Along the north property lines of lots 22 through 32
 - (b.) Along the west property lines of lots 32 through 39 and 88 through 93
 - (c.) Along the south property lines of lots 1 through 6 and 94 through 97
 - (d.) Along the south property lines of lot 39
 - (e.) Along the north property lines of lot 88
 - (f.) Along the east property lines of lot 97
 - (g.) Along the west property lines of lot 1
98. Blue Botts' dots shall be placed at the center of the street for each fire hydrant.
99. A City benchmark shall be established in the top of curb north at the northeast corner of Los Angeles Avenue and Mannel Avenue. Benchmark shall be indicated as a chiseled or stamped "X" in the top of curb at either end of the curb return. Elevation shall be certified by a licensed land surveyor for the State of California. Level circuit data and calculations shall be submitted to the City of Shafter for approval.

ENGINEERING: LANDSCAPING

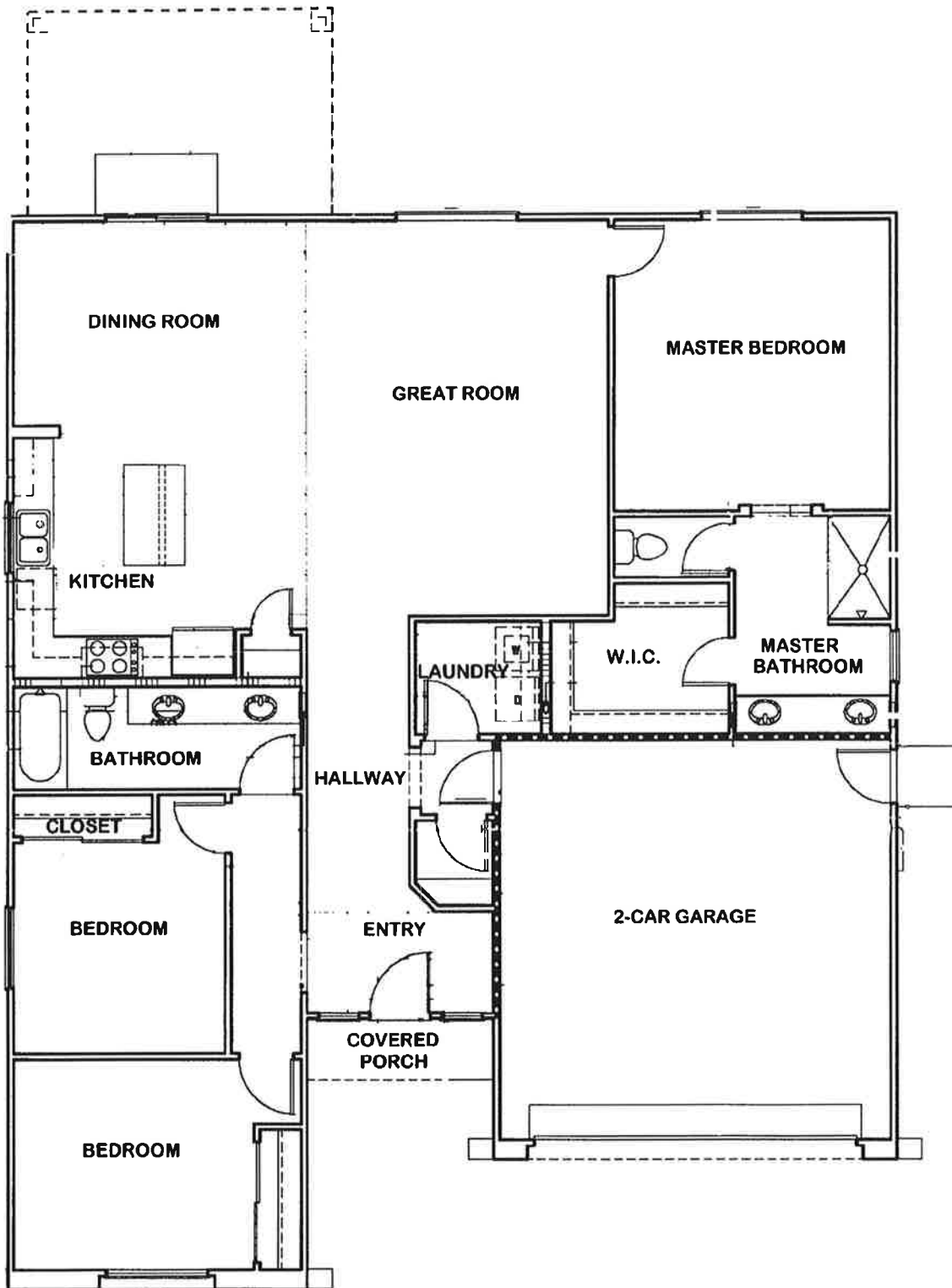
100. All landscaping plans including plants, irrigation equipment, points of connection to water lines, electrical services for timers, lighting, etc. shall be approved by the City Engineer prior to construction.

101. A masonry wall, or approved alternative, is to be installed:
 - (a.) Along the north property lines of lots 22 through 32
 - (b.) Along the west property lines of lots 32 through 39 and 88 through 93.
 - (c.) Along the south property lines of lots 1 through 6 and 94 through 97
 - (d.) Along the east property lines of lots 6 through 21
102. Wall plans, materials, dimensions to be approved by City prior to construction.
103. Landscaping plans including irrigation timers, piping, sprinklers, fittings, plants, trees, turf shall be approved by the City.
104. Landscaping water service point of connection shall be approved by the City Engineer. Sleeves shall be placed under the proposed paving for landscaping piping per the City Engineer.
105. Landscaping plumbing & electrical shall be designed for all phases of the tract.
106. Developer shall place the entire subdivision within a new or pre-existing Landscape/Lighting Maintenance District, prior to acceptance of improvements by the City.
 - (a.) The maintenance district shall be set-up to cover the cost of street lighting, drainage basin maintenance, and landscaping maintenance, as well as all administrative costs associated with the City's management of the district.
 - (b.) The Developer shall be required to cover the cost of street lighting, maintain all landscaping, including the replacement of any trees or shrubs that do not survive, within public right-of-way and landscape easements for a period of six (6) months after final inspection of the landscape improvements, or until such time as the maintenance district is formed, whichever shall occur last.
 - (c.) Developer shall be fully responsible for the formation, and formation cost of the Landscape/Lighting Maintenance District, as directed by the City Engineer.
 - (d.) Developer shall be fully responsible for paying the cost of water for all landscaping and electricity for the street lights until such time as the maintenance district is formed.

**EXHIBIT “E” TO
TENTATIVE TRACT NO. 6490 DEVELOPMENT AGREEMENT NO. 21-20**

HOUSE PLANS AND ELEVATIONS

PLAN 1 (1665)



PLAN 1 (1665) ELEVATION

(Spanish)



PLAN 1 (1665) ELEVATION

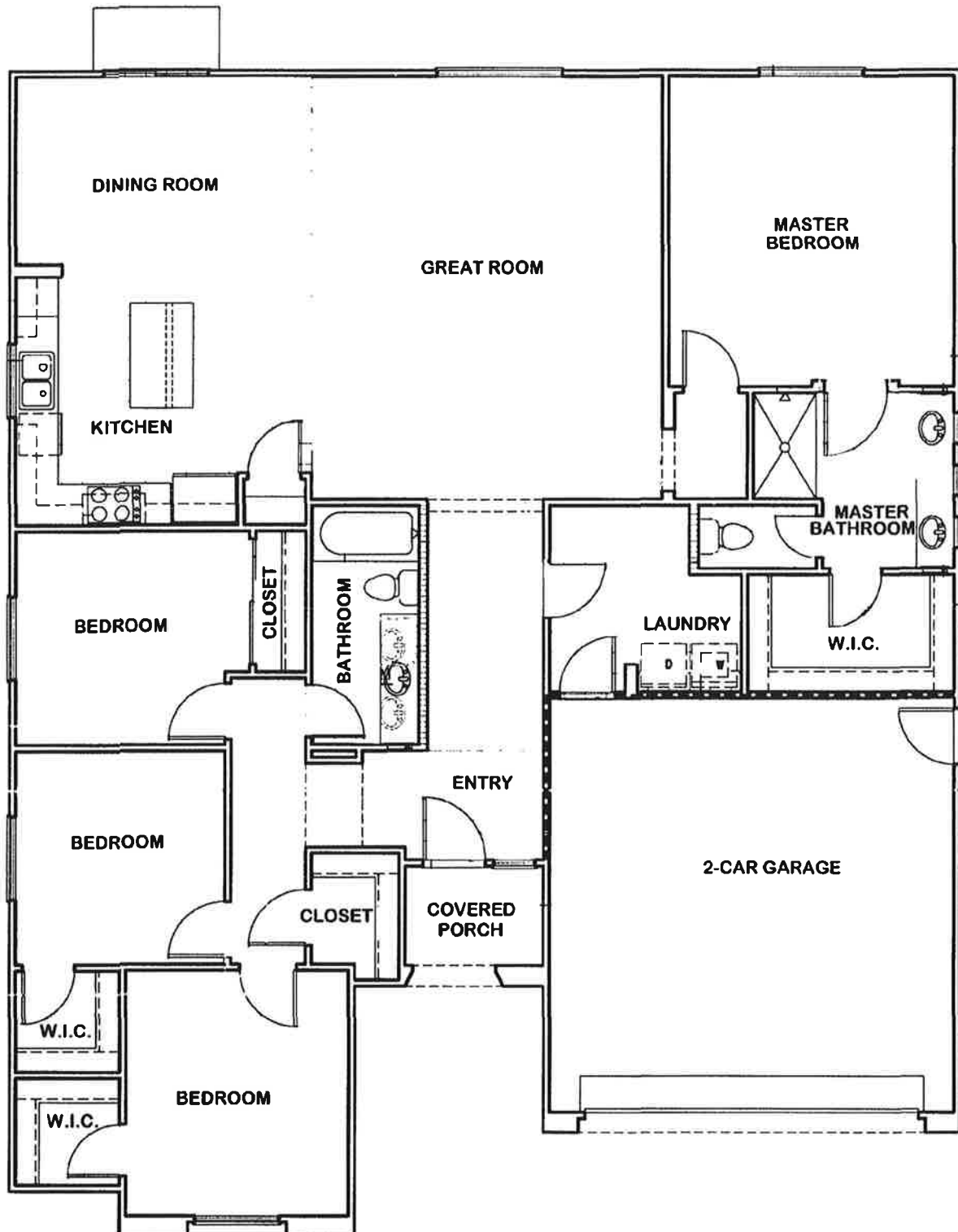
(Farmhouse)



PLAN 1 (1665) ELEVATION
(Contemporary)



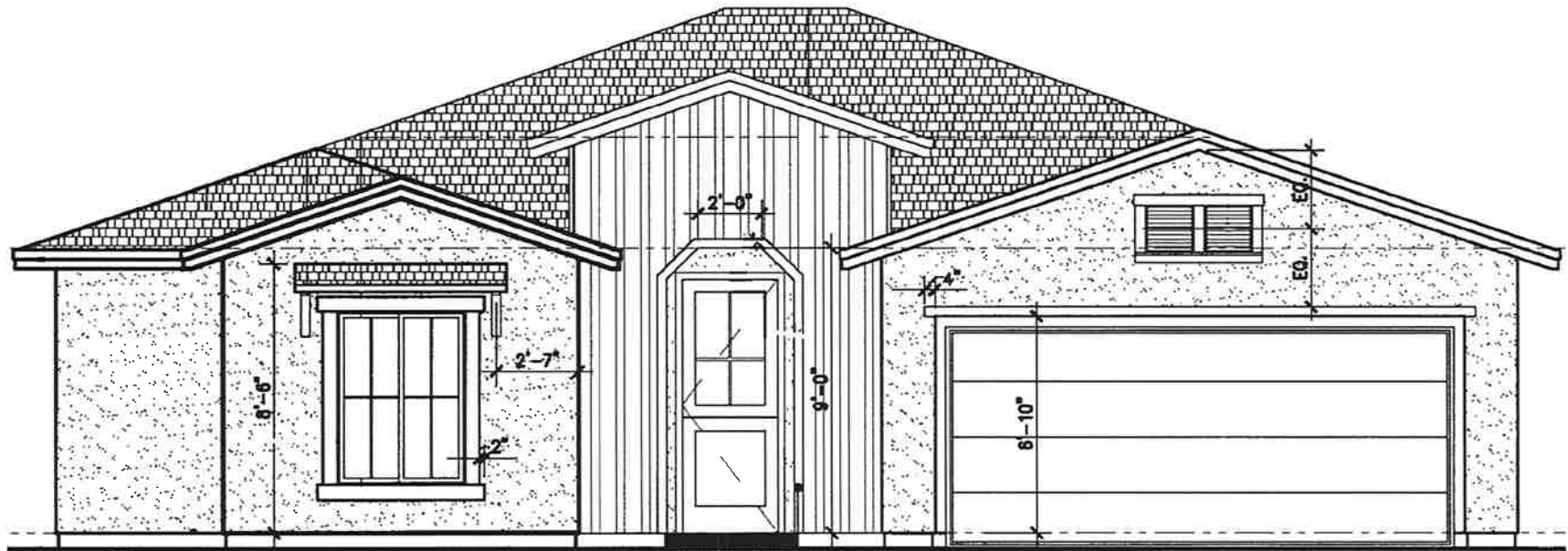
PLAN 2 (1884)



PLAN 2 (1844) ELEVATION
(Spanish)



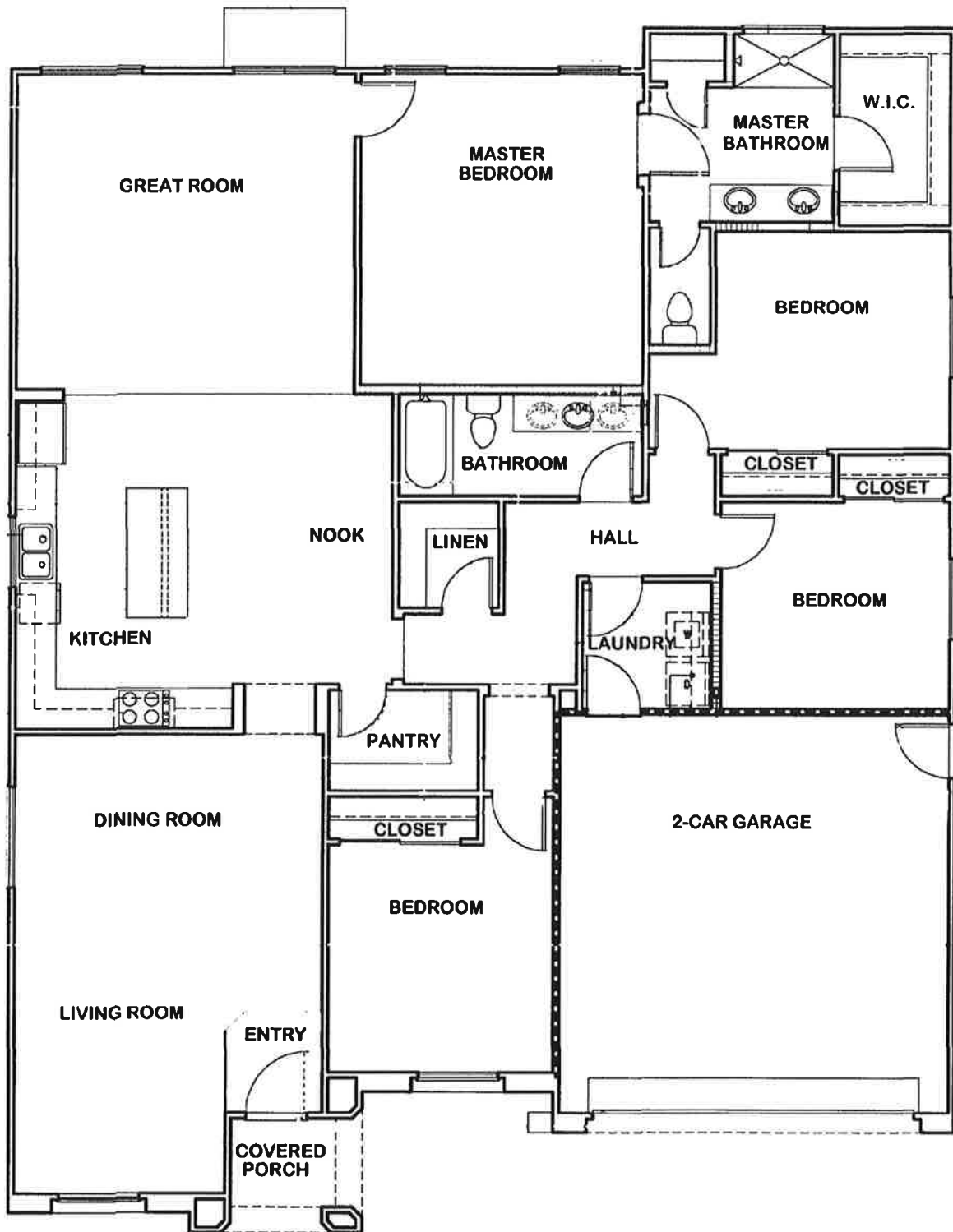
PLAN 2 (1844) ELEVATION
(Farmhouse)



PLAN 2 (1844) ELEVATION
(Contemporary)



PLAN 3 (2102)



PLAN 3 (2102) ELEVATION
(Spanish)



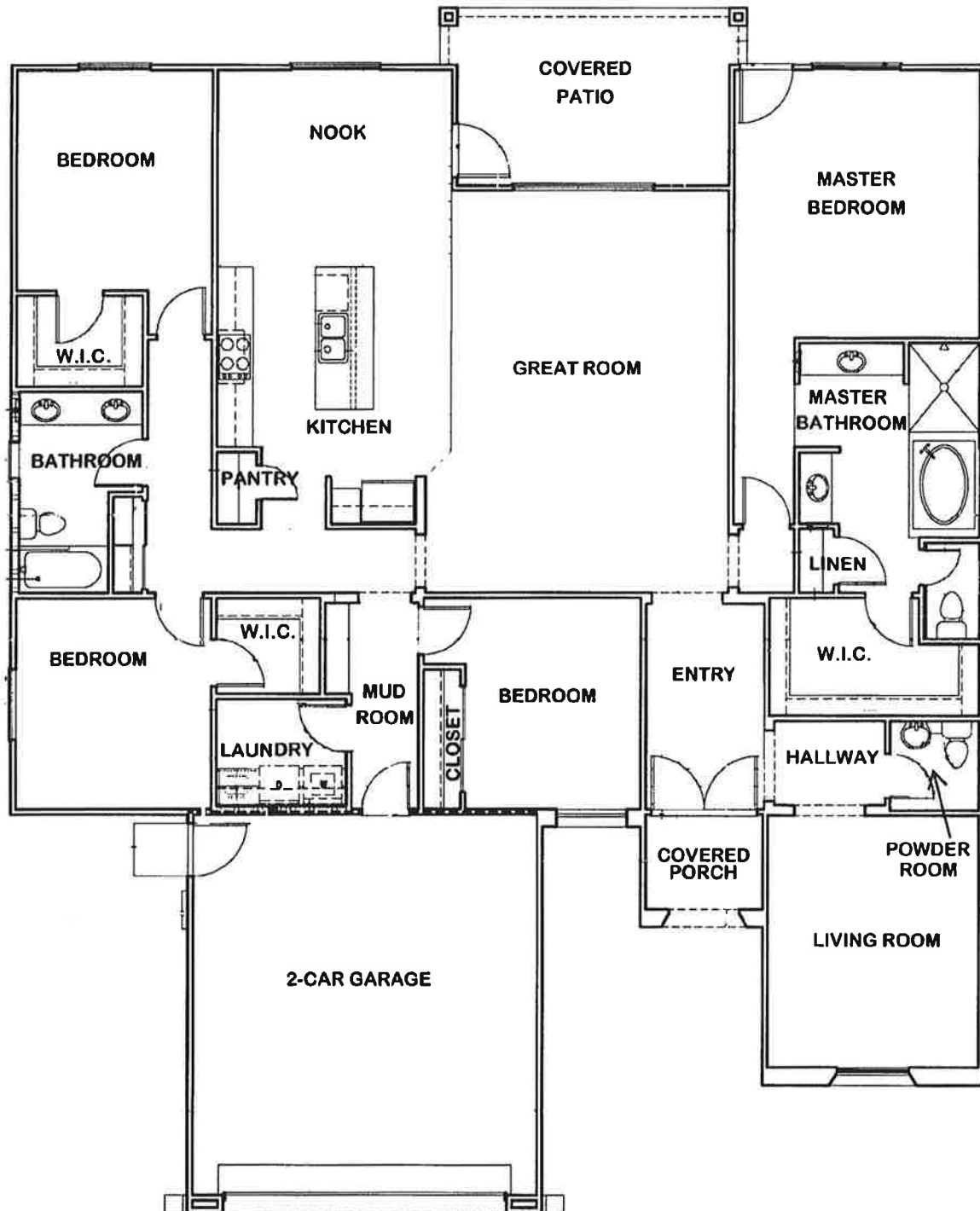
PLAN 3 (2102) ELEVATION
(Farmhouse)



PLAN 3 (2102) ELEVATION
(Contemporary)

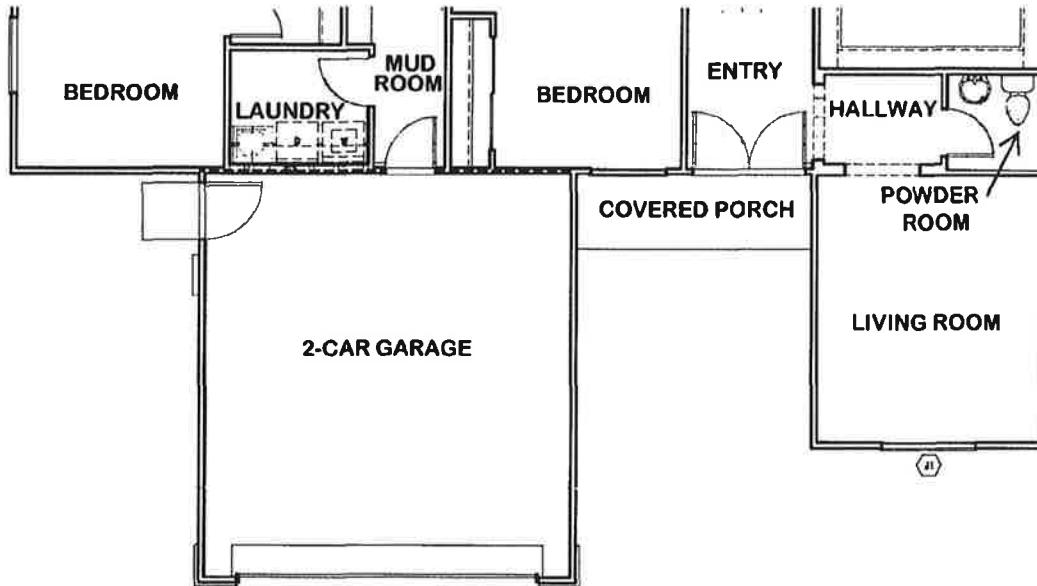


PLAN 4 (2402)
(Spanish)

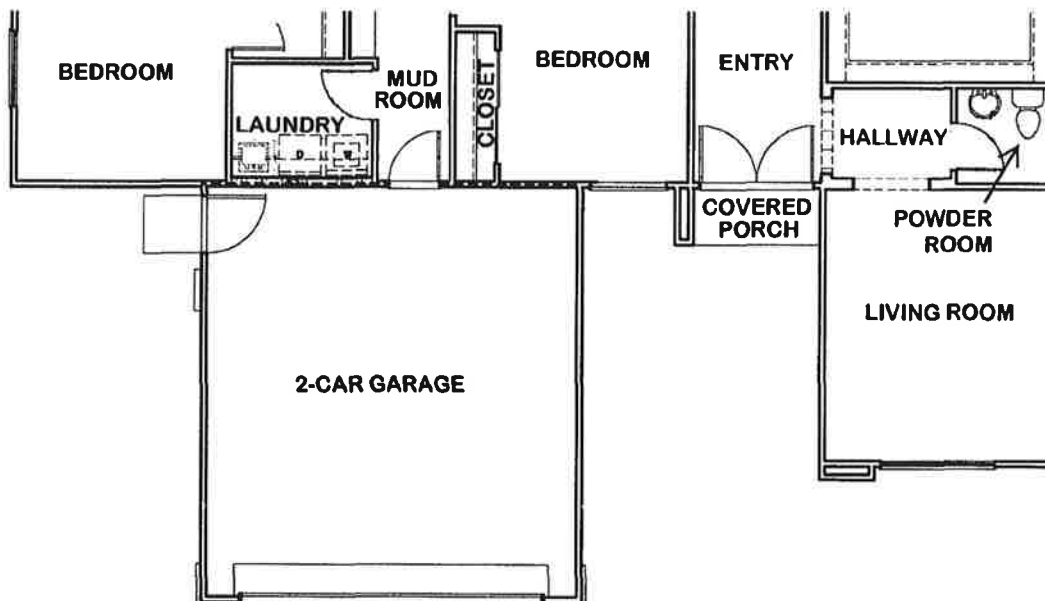


PLAN 4 (2402)
(Farmhouse & Contemporary Plans)

Farmhouse



Contemporary



PLAN 4 (2402) ELEVATION
(Spanish)



3-car option



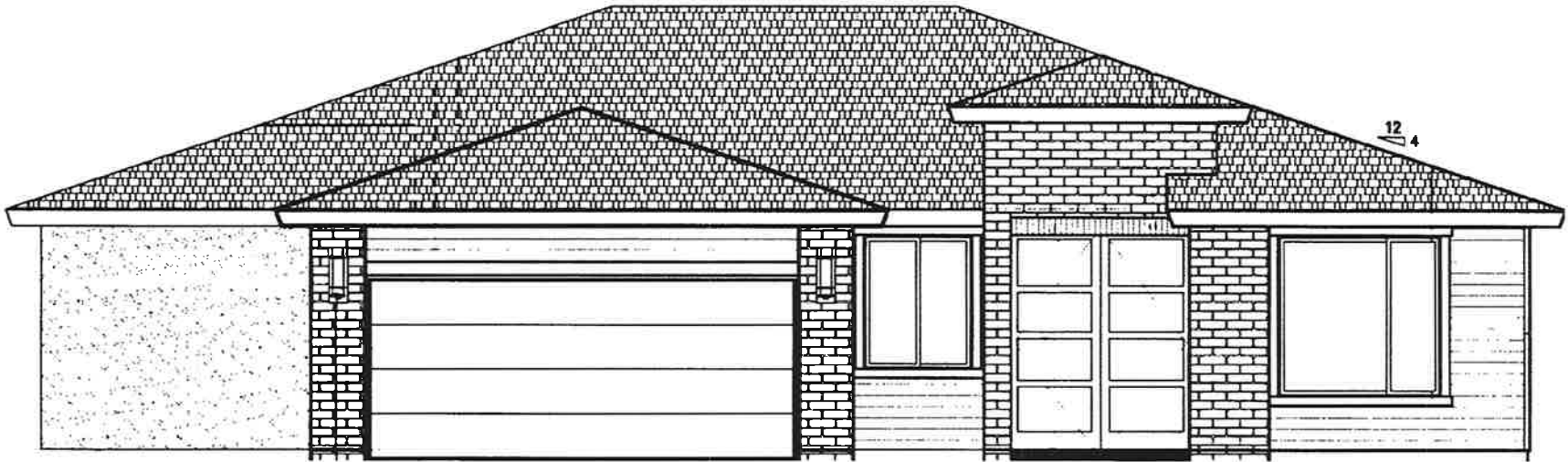
PLAN 4 (2402) ELEVATION
(Farmhouse)



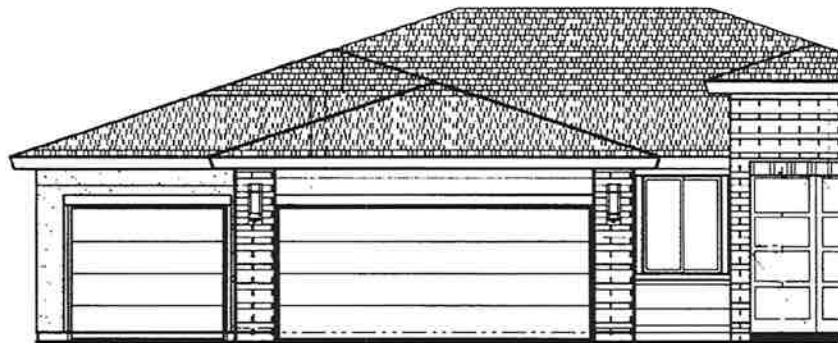
3-car option



PLAN 4 (2402) ELEVATION
(Contemporary)



3-car option



This is a true certified copy of the
record if it bears the seal, imprinted
in purple ink, of the Recorder.

08/12/2022

JON LIFQUIST, Assessor-Recorder
Kern County California



By

Laura Bolden

Deputy

RESOLUTION NO. 23-429

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SHAFTER
RECOMMENDING THE CITY COUNCIL APPROVE AND ADOPT EXECUTION OF A
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT NO. 21-20 FOR
TENTATIVE TRACT NO. 6490**

WHEREAS, the City of Shafter (“City”) and Summit Capital Ventures, Inc. (“Owner”), entered into a Development Agreement (“DA”) dated April 5, 2022, and recorded April 13, 2022, as Entry No. 222057077 in the office of the Kern County Recorder; and

WHEREAS, the approved DA guides the development of the Tentative Tract No. 6490 as described in Exhibit “A” (“Property”); and

WHEREAS, the DA sets the minimum single family dwelling unit size language at 1,600 square feet and the average unit size at 1,800 square feet; and

WHEREAS, the DA provides four house plans and elevations as an appendix; and

WHEREAS, the Owner has requested revisions to the current DA as described in Exhibit “B” (“First Amendment”); and

WHEREAS, the First Amendment would revise the minimum unit size language from 1,600 to 1,441 square feet and the average unit size from 1,800 to 1,600 square feet in the DA; and

WHEREAS, the First Amendment would also revise the four house plans and elevations in the DA; and

WHEREAS, the revisions because of the First Amendment will be beneficial to the City by providing a more affordable housing product within the historic core of the City while at the same time not reduce the total number of units being built within the tract or sacrificing the quality of the units; and

WHEREAS, the Owner has incurred and will in the future incur substantial costs to assure development of the Property in accordance with the DA and this First Agreement; and

WHEREAS, the Owner has incurred and will in the future incur costs more than the generally applicable requirements to assure vesting of legal rights to develop the Property in accordance with the DA and this First Agreement; and

WHEREAS, a timely and properly noticed public hearing for this Resolution No. 23-429 was held by the Planning Commission of the City of Shafter on October 10, 2023, at which hearing evidence, oral and documentary, was admitted on behalf of said Resolution.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Shafter, in a regularly scheduled meeting assembled on the 10th day of October, 2023, resolved to recommend that the City Council approve and adopt execution of the First

EXHIBIT 2

Amendment to Development Agreement No. 21-20 for Tentative Tract No. 6490, as set forth in attached Exhibit “B” of this Resolution.

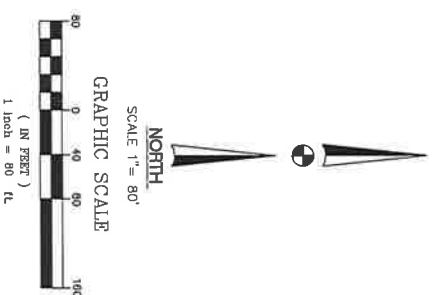
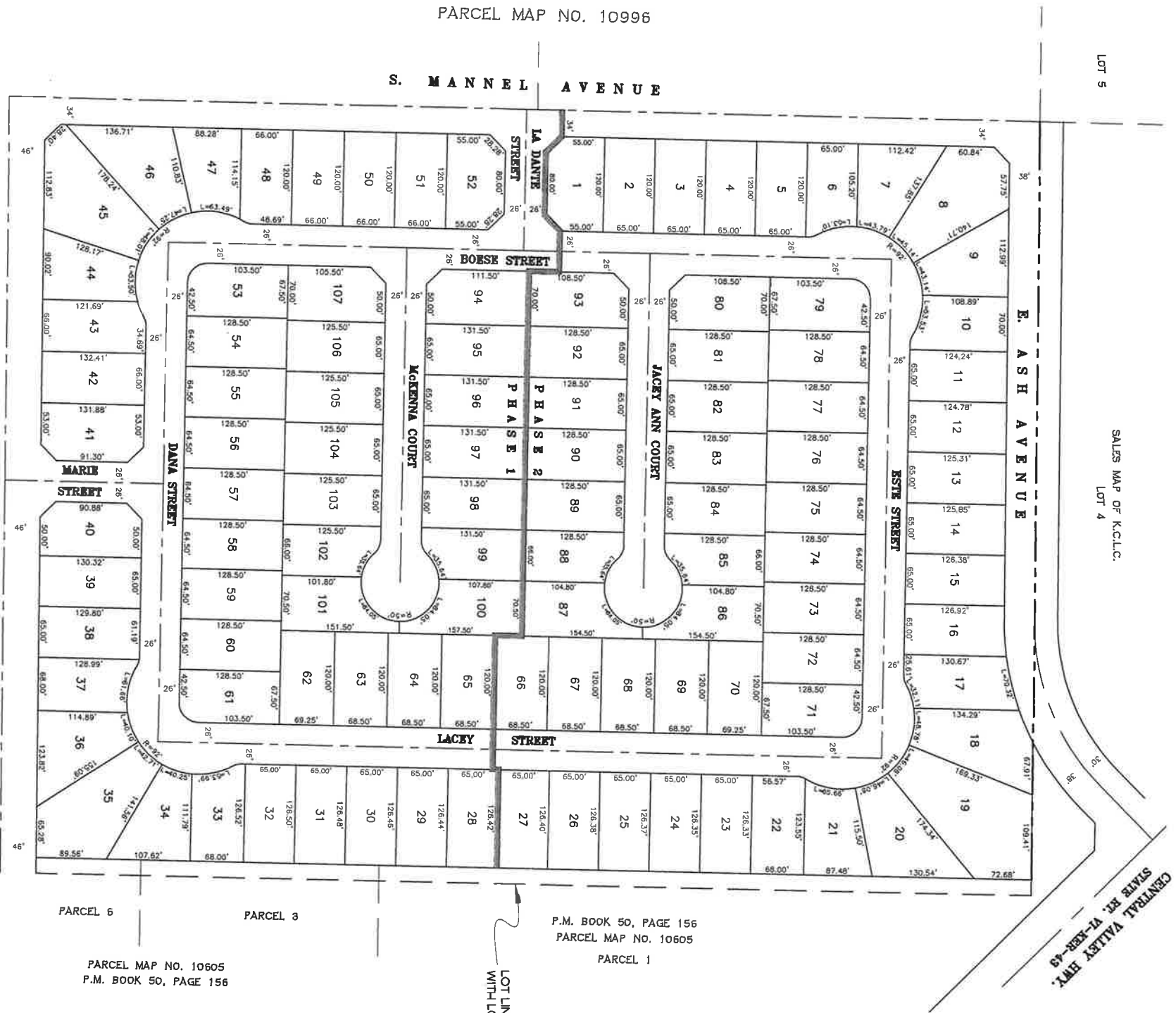
BE IT FURTHER RESOLVED that a copy of this Resolution be delivered forthwith to the City Council of the City of Shafter.

PASSED AND ADOPTED THIS 10th DAY OF OCTOBER, 2023.

John Sanchez, Chairman

ATTEST:

Vanessa Uribe, Deputy City Clerk



STATISTICS	
A.P.N. 028-180-07	
ZONING: R-1	
GENERAL BUSINESS, MR AND LR	
SEWER: CITY OF SHAFTER	
WATER: CITY OF SHAFTER	
ELECT. P.G. AND E.	
GAS: SO. CALIF. GAS CO.	
PHONE: S.B.C.	
DRAINAGE SHALL BE PER CITY STANDARDS	
ELEM. & MIDDLE SCHOOL DIST: RICHLAND	
HIGH SCHOOL DIST: RICHLAND	
POST OFFICE: 93420	
LOT SIZES: 3.64 / AC	
LOT YIELD: 2800 SF - 18,568 SF	
PROPOSED USE: SINGLE FAMILY RESIDENTIAL LOTS	
THIS IS A 'PHASED' DEVELOPMENT	

- CITY PHASING REQUIREMENTS
1. THE SOUTH HALF OF THE DEVELOPMENT MUST BE THE FIRST PHASE OF CONSTRUCTION.
 2. S. MANNEL AVENUE, FROM E. LOS ANGELES TO LA DANTE ST. WILL NEED TO BE CONSTRUCTED WITH PHASE 1. THE PORTION OF S. MANNEL AVE. NORTH OF PHASE 1 TO BE CONSTRUCTED AS DIRECTED BY THE CITY ENGINEER.
 3. A TEMPORARY STREET TURN-AROUND WILL BE REQUIRED AT THE NORTH END OF LACEY ST. AT THE PHASE BOUNDARY.
 4. ALL WATER IMPROVEMENTS IN S. MANNEL, BETWEEN E. LOS ANGELES AND E. ASH AVE. WILL BE REQUIRED TO BE CONSTRUCTED WITH PHASE 1.

SUBSTANTIAL CONFORMANCE DETERMINATION

APPROVED BY: 9/17/21

STEVE J. ESSELMAN
PLANNING DIRECTOR

TENTATIVE TRACT MAP NO. 6490

BEING A DIVISION OF LOT 13 AND THE WEST HALF OF LOT 14 OF THE SALES MAP OF LANDS OF THE KERN COUNTY LAND COMPANY, ALSO BEING PORTIONS OF NORTHEAST QUARTER OF SECTION 15, T. 28 S., R. 25 E., M.D.M., CITY OF SHAFTER, COUNTY OF KERN, STATE OF CALIFORNIA CONTAINING 29.4 ACRES 107 SINGLE FAMILY LOTS

OWNER/SUBOWNER:
SUMMIT CAPITAL VENTURES, INC.
8701 SWIGERT COURT
BAKERSFIELD, CA. 93311

PREPARED BY:
SAN JOAQUIN ENGINEERING, INC.
Civil Engineering & Land Development Services
9630 EAGLEMAN ROAD, STE. B #226 BAKERSFIELD, CA 93312
PHONE/FAX: (661)386-0977
EMAIL: BDAWSON@SJEINC.NET

CONTACT:
BRETT DAWSON, P.E.

DATE: 09/17/21

SHEET 1 OF 1

SJE

RECORDING REQUESTED BY,
AFTER RECORDING RETURN TO:

City of Shafter
Attn: City Clerk
336 Pacific Ave.
Shafter, CA 93263

Exempt from filing fees per Gov't Code §27383

(space above for Recorder's use)

**FIRST AMENDMENT
TO
TENTATIVE TRACT NO. 6490 DEVELOPMENT AGREEMENT NO. 21-20
BETWEEN CITY OF SHAFTER
AND SUMMIT CAPITAL VENTURE, INC.**

This FIRST AMENDMENT TO TENTATIVE TRACT NO. 6490 DEVELOPMENT AGREEMENT NO. 21-20 BETWEEN CITY OF SHAFTER AND SUMMIT CAPITAL VENTURES, INC. ("First Amendment") is entered into effective as of the ____ day of _____, 2023 ("First Amendment Effective Date"), by and between CITY OF SHAFTER, a California municipal corporation ("City"), and SUMMIT CAPITAL VENTURE, INC., a California corporation ("Owner"). The City and Owner are sometimes hereinafter referred to as "Parties".

RECITALS

A. City and Owner entered into that certain Tentative Tract No. 6490 Development Agreement No. 21-20 between City of Shafter, a California municipal corporation, and Summit Capital Venture, Inc., a California corporation, dated April 5, 2022, recorded April 13, 2022, as Entry No. 222057077 in the office of the Kern County Recorder ("Development Agreement").

B. The Development Agreement affects certain real property located in Kern County, California, as more fully described on Exhibit A attached hereto and incorporated herein by reference ("Property").

C. The Parties now wish to amend the Development Agreement to revise the language in Section 7.10 to change the minimum single family dwelling unit size language from 1,600 to 1,441 square feet and the average dwelling unit size of all plans being offered from 1,800 to 1,600 square feet.

D. The Parties also now wish to amend the Development Agreement to revise the four original house plans and elevations shown in Exhibit E of the Development Agreement to four new house plans and elevations as shown in Exhibit B attached hereto and incorporated herein by reference.

AMENDMENTS

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Owner agree to amend the Development Agreement as follows:

1. **Recitals; Defined Terms.** The recitals above are hereby incorporated herein by this reference as if fully set forth in this paragraph. All capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Development Agreement.

2. **Minimum Dwelling Unit Size.** Section 7.10 of the Development Agreement is hereby amended to read as follows:

“Owner agrees that the minimum single family dwelling unit size permitted in the subdivision shall be no less than 1,441 square feet of living space, with an average dwelling unit size of all plans being offered of not less than 1,600 square feet of living space. The minimum square foot requirement excludes garages, patios and/or porches whether enclosed or not.”

3. **House Plans and Elevations.** Exhibit E of the Development Agreement is hereby amended with Exhibit B of this First Amendment.

4. **Confirmation.** Except as amended and revised by this First Amendment, all terms and conditions in the Development Agreement remain unchanged and in full force and effect. In the event of any conflict between the terms of this First Amendment and the Development Agreement, this First Amendment shall control. This First Amendment may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, City and Owner have executed this First Amendment as of the First Amendment Effective Date.

[Signatures and Acknowledgments Follow]

OWNER:

SUMMIT CAPITAL VENTURES, INC., a
California corporation

By: _____
Name: _____
Its: _____

CITY:

CITY OF SHAFTER, a California municipal
corporation and charter city

Chad Givens
City of Shafter Mayor

ATTEST:

Yazmina Pallares
City Clerk

APPROVED AS TO FORM:

Marco Martinez
City Attorney

STATE OF CALIFORNIA)
)
) ss
COUNTY OF _____)

On this _____ day of _____, 2023, before me personally appeared _____, personally known to me or whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he signed the foregoing document, as the _____ of Summit Capital Ventures, Inc., a California corporation.

Notary Public

EXHIBIT A

(Legal Description of the Property)

EXHIBIT "A"
TRACT 6490
LEGAL DESCRIPTION

BEING A DIVISION OF LOT 13 AND A PORTION OF THE WEST HALF OF LOT 14 OF SALES MAP OF LANDS OF KERN COUNTY LAND COMPANY IN SECTION 15, TOWNSHIP 28 SOUTH, RANGE 25 EAST, MOUNT DIABLO BASE AND MERIDIAN, FILED FEBRUARY 11, 1913 IN THE OFFICE OF THE KERN COUNTY RECORDER, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 13;

THENCE, NORTHERLY ALONG THE WEST LINE OF SAID LOT 13, NORTH 01°24'18" EAST A DISTANCE OF 1,319.86 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF SAID LOT 13;

THENCE, EASTERLY ALONG THE NORTH LINE OF SAID LOT 13, SOUTH 89°03'48" EAST A DISTANCE OF 660.47 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID LOT 13;

THENCE, CONTINUING SOUTH 89°03'48" EAST A DISTANCE OF 310.23 FEET, MORE OR LESS, ALONG THE NORTH LINE OF SAID LOT 14 TO A POINT OF INTERSECTION WITH THE WEST LINE OF A WATERLINE EASEMENT DEDICATED TO THE UNITED STATES OF AMERICA PER INSTRUMENT 17472, BOOK 2581, PAGE 194 OF OFFICIAL RECORDS OF SAID COUNTY, SAID WEST LINE ALSO BEING THE WEST LINE OF THE EAST 20 FEET OF THE WEST HALF OF SAID LOT 14;

THENCE, LEAVING SAID NORTH LINE, SOUTH 01°23'01" WEST ALONG SAID WEST LINE A DISTANCE OF 1,319.98 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF SAID LOT 14;

THENCE, WESTERLY ALONG THE SOUTH LINE OF SAID LOT 14, NORTH 89°03'22" WEST A DISTANCE OF 310.40 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF SAID LOT 14;

THENCE, WESTERLY ALONG THE SOUTH LINE OF SAID LOT 13, NORTH 89°03'22" WEST A DISTANCE OF 660.80 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

CONTAINING 29.42 ACRES GROSS, MORE OR LESS.

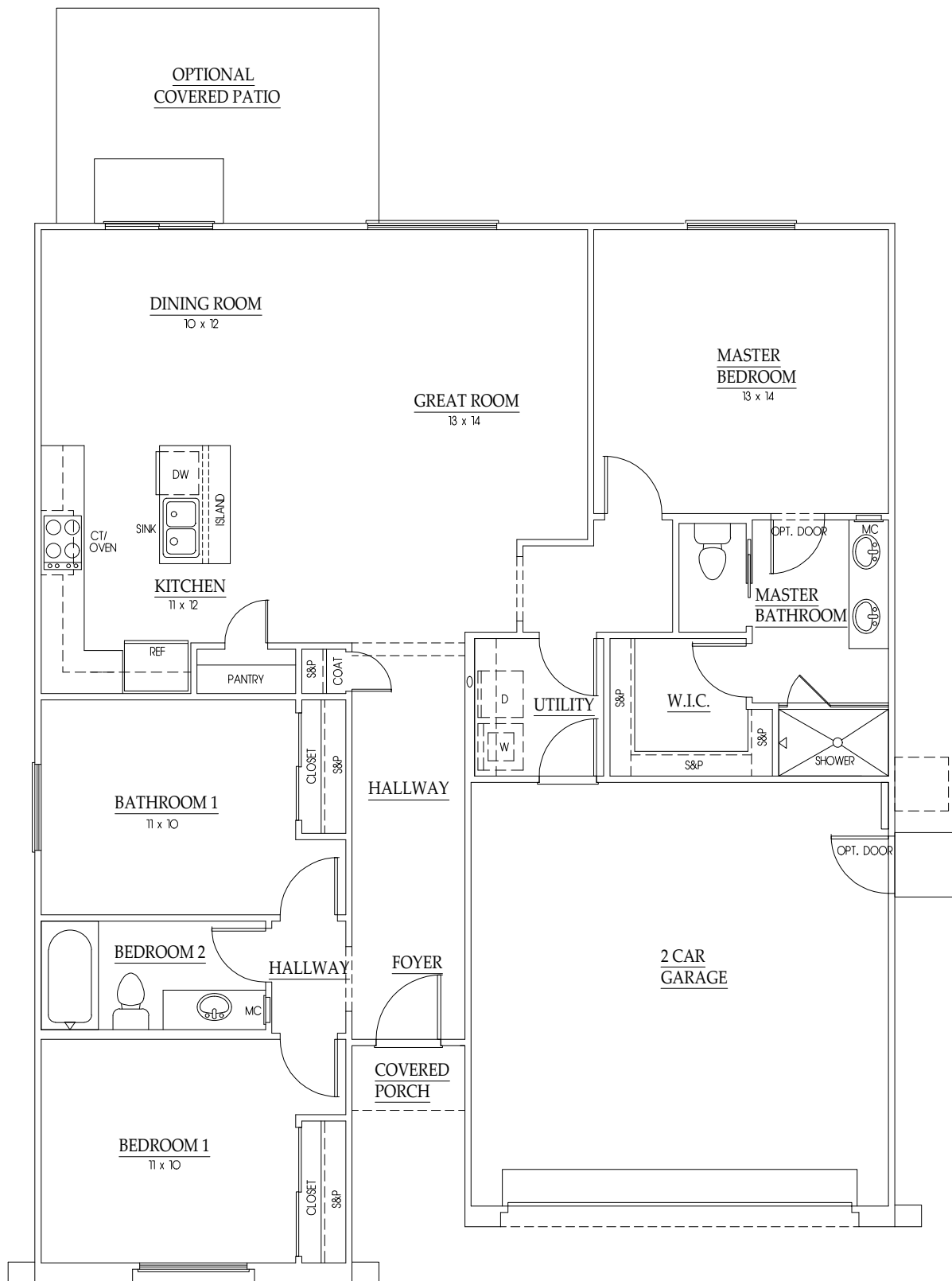

JASON VAN CUREN, PLS 7439

23.2022
Date

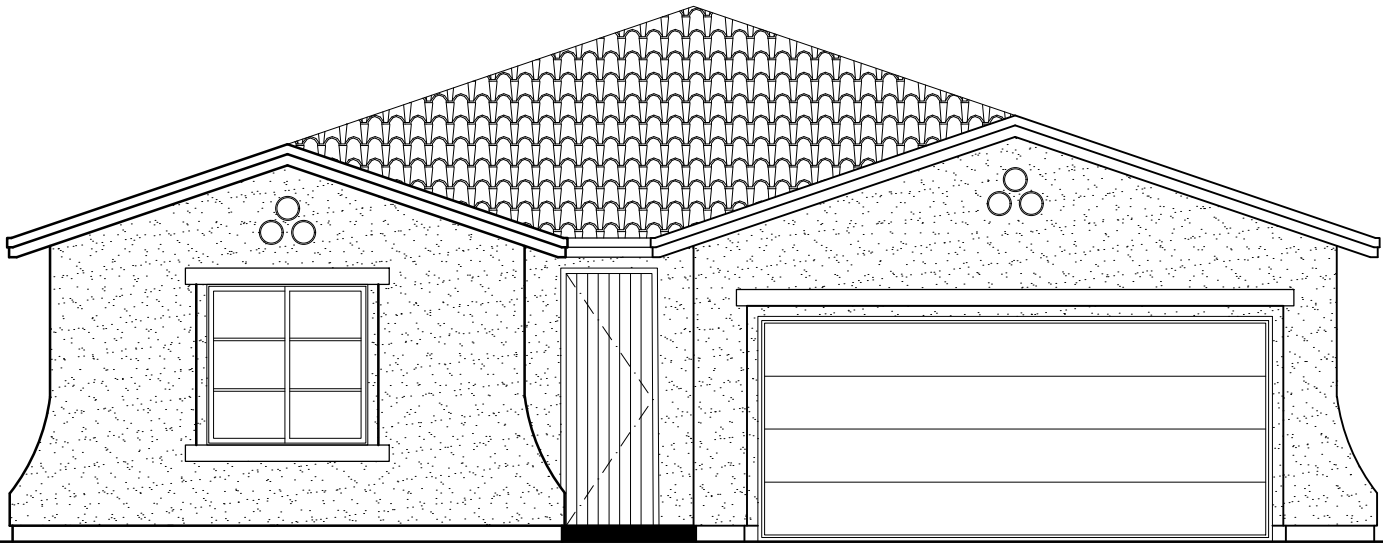


EXHIBIT B

(Revised House Plans and Elevations)



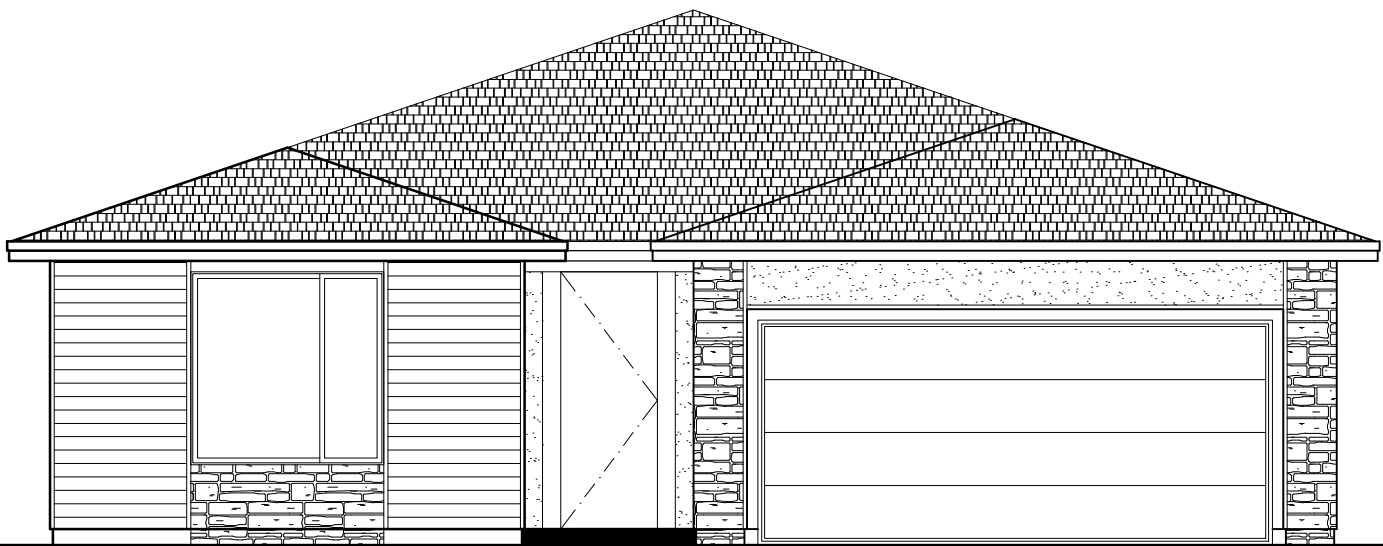
LIVING AREA: 1441 SQ. FT.



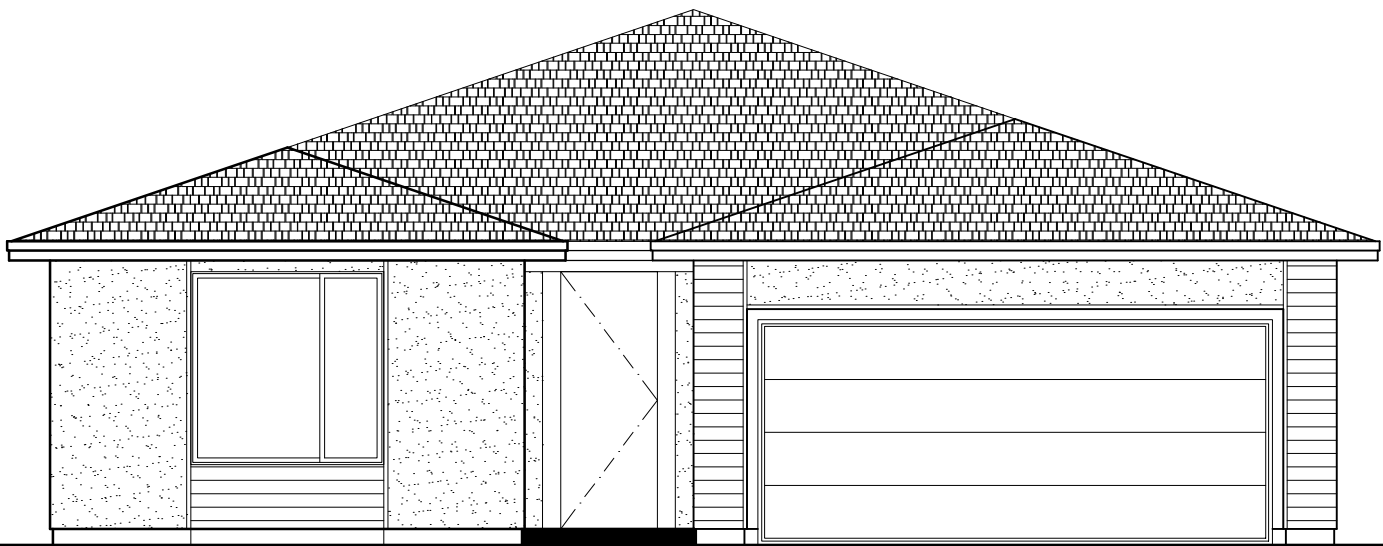
SPANISH



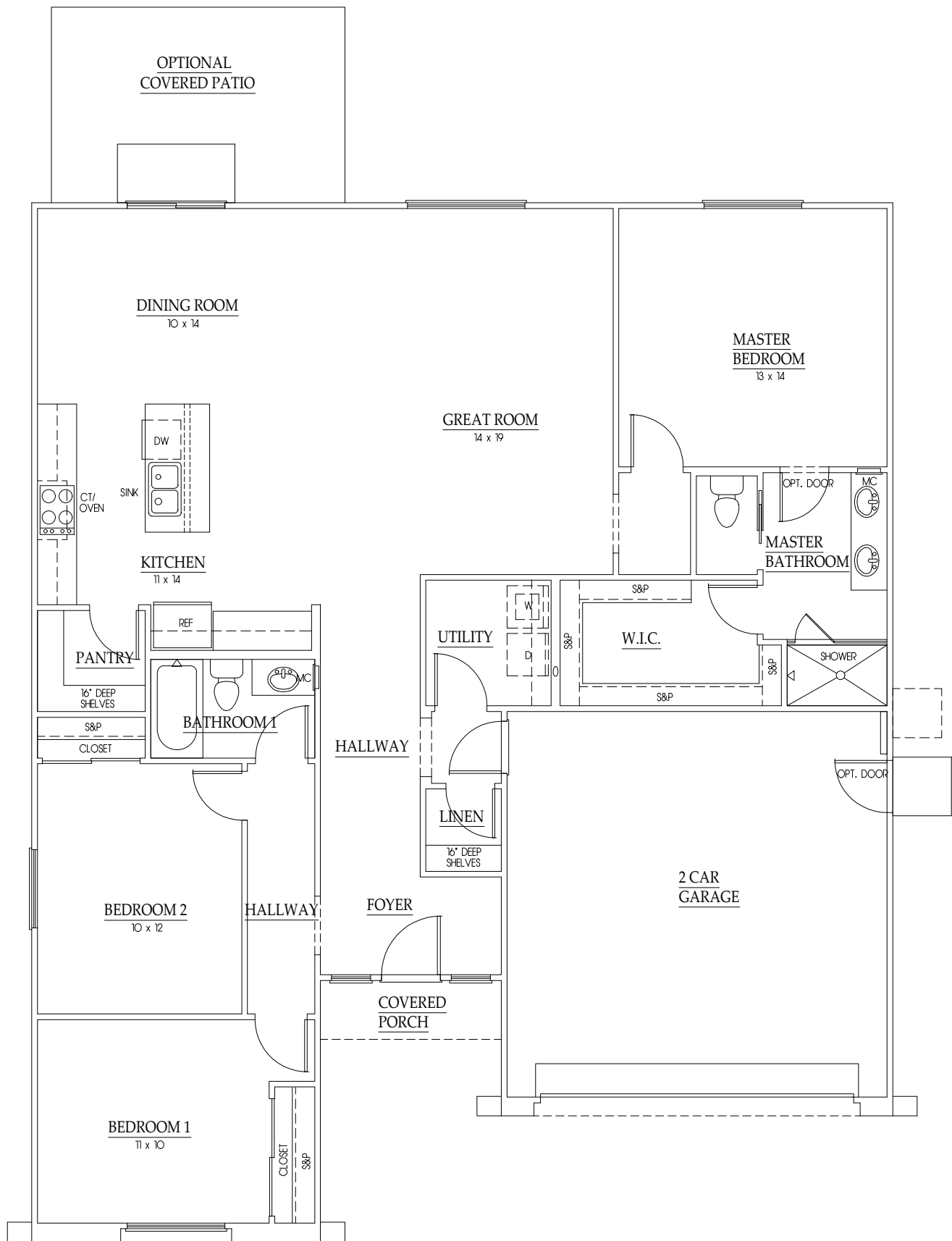
FARMHOUSE



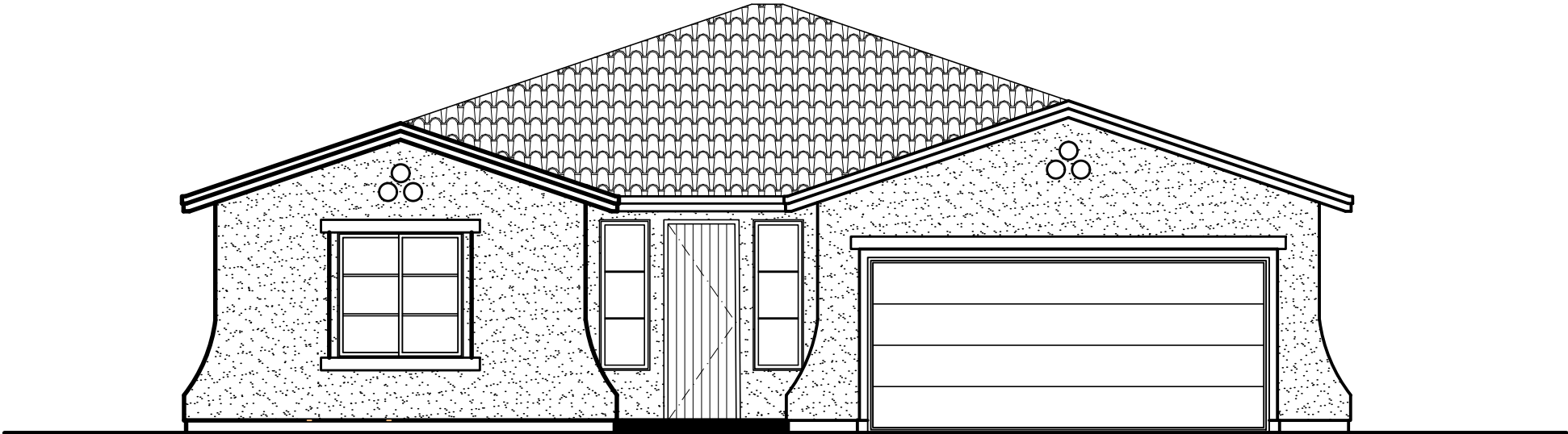
CONTEMPORARY



MODERN



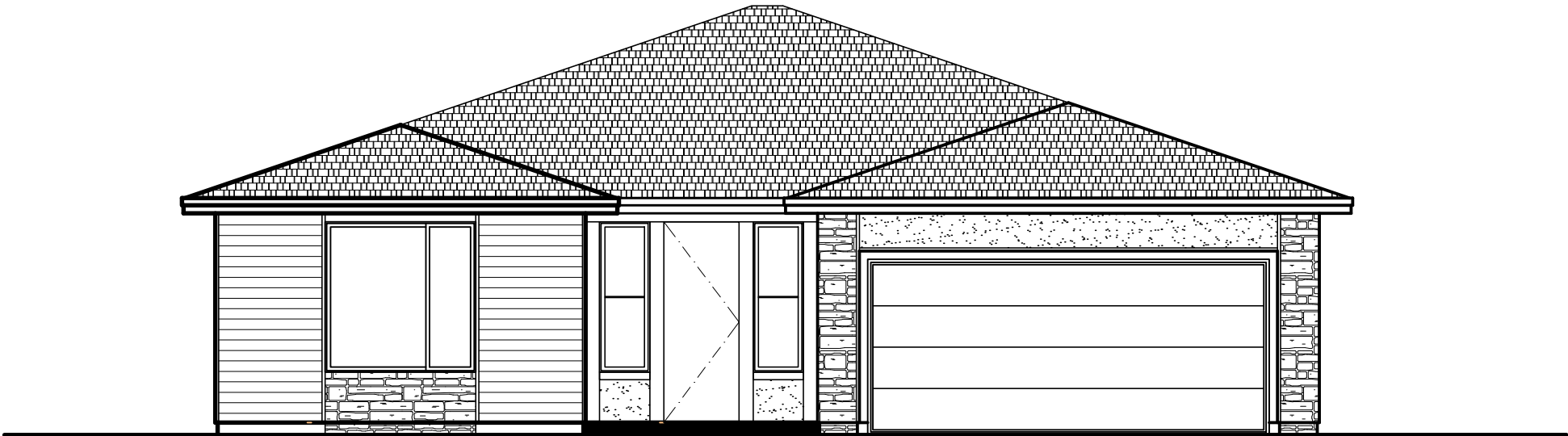
LIVING AREA: 1665 SQ. FT.



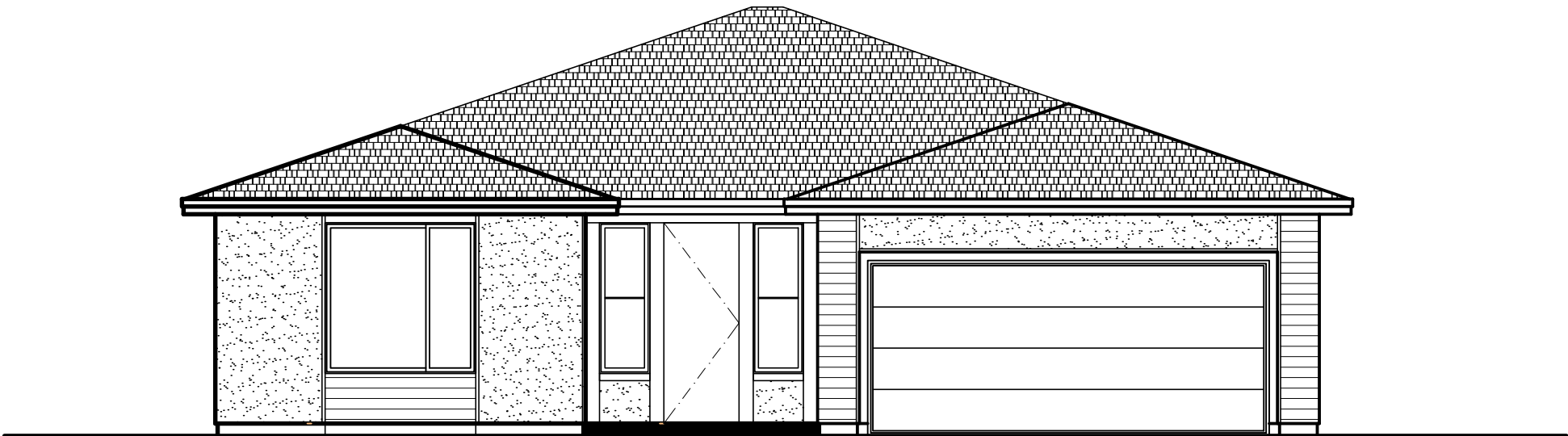
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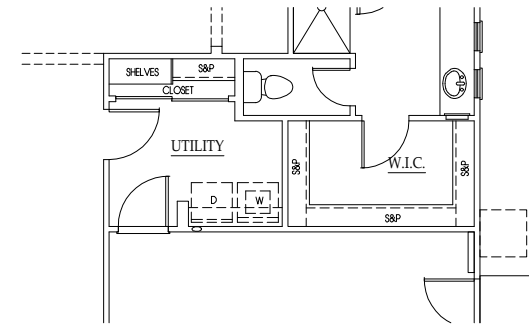
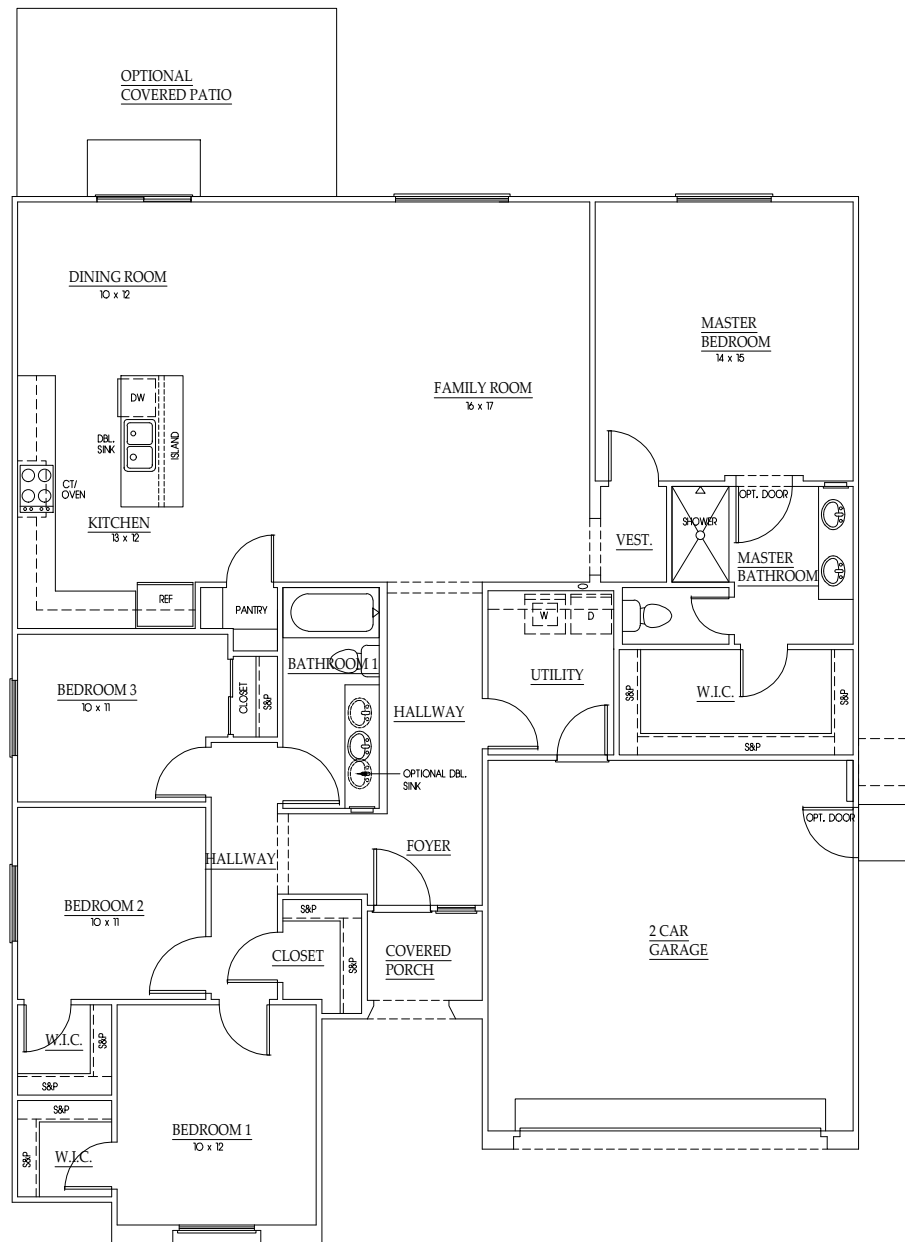
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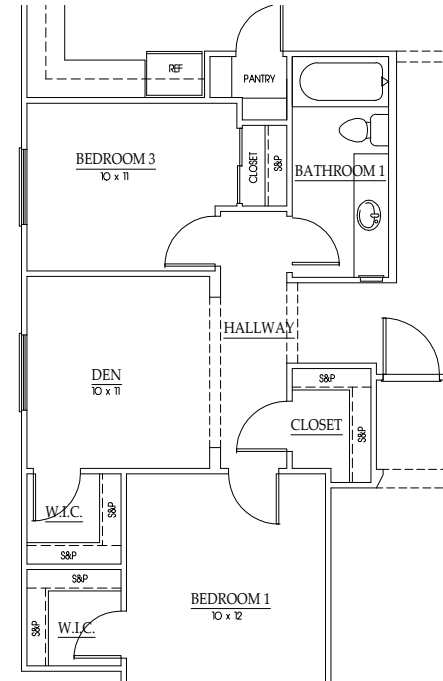
CONTEMPORARY



MODERN



CLOSET OPTION AT UTILITY ROOM



DEN OPTION

LIVING AREA: 1844 SQ. FT.

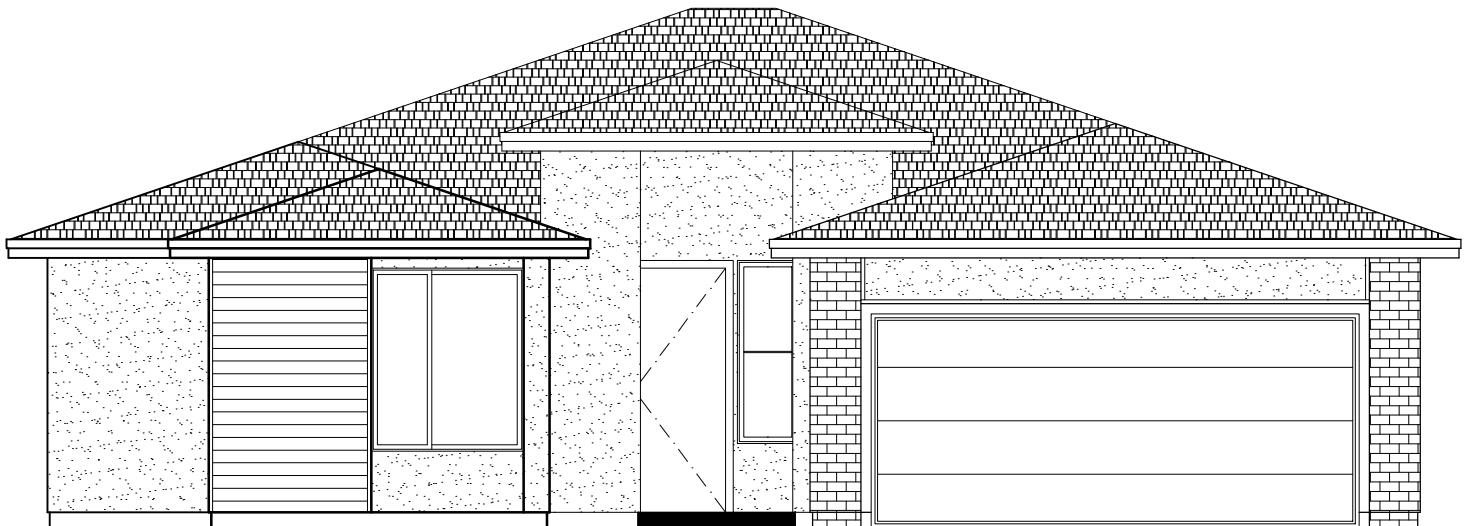
jb John Balfanz
homes



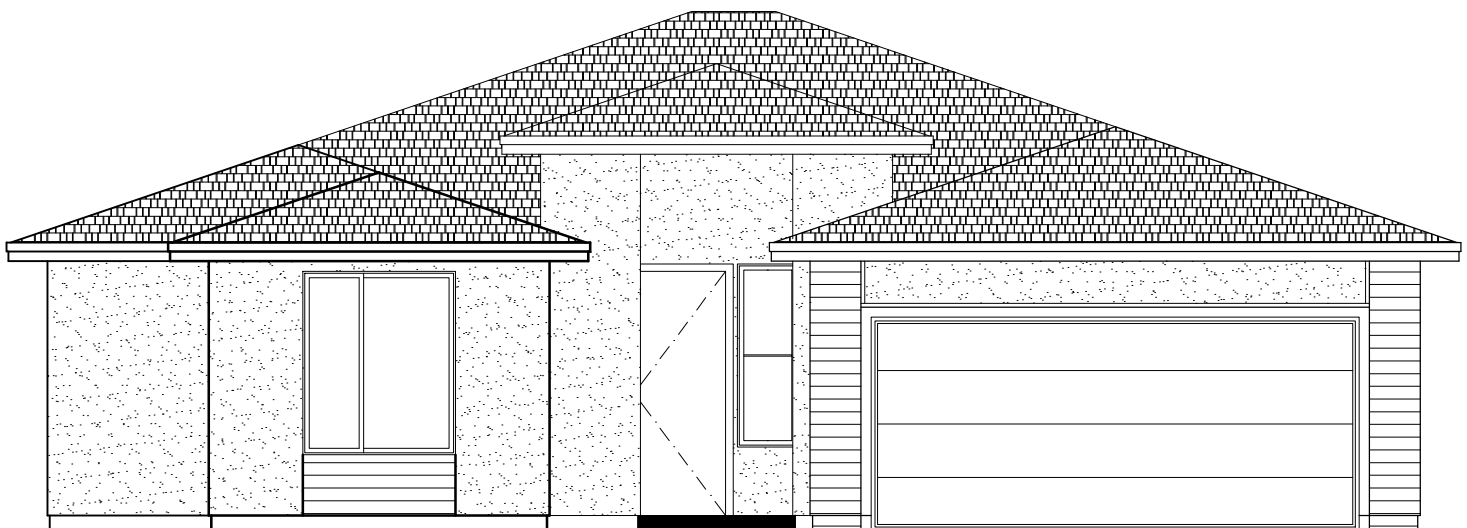
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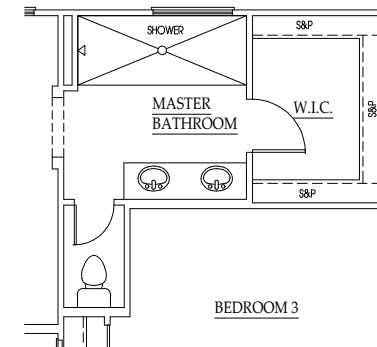
FARMHOUSE



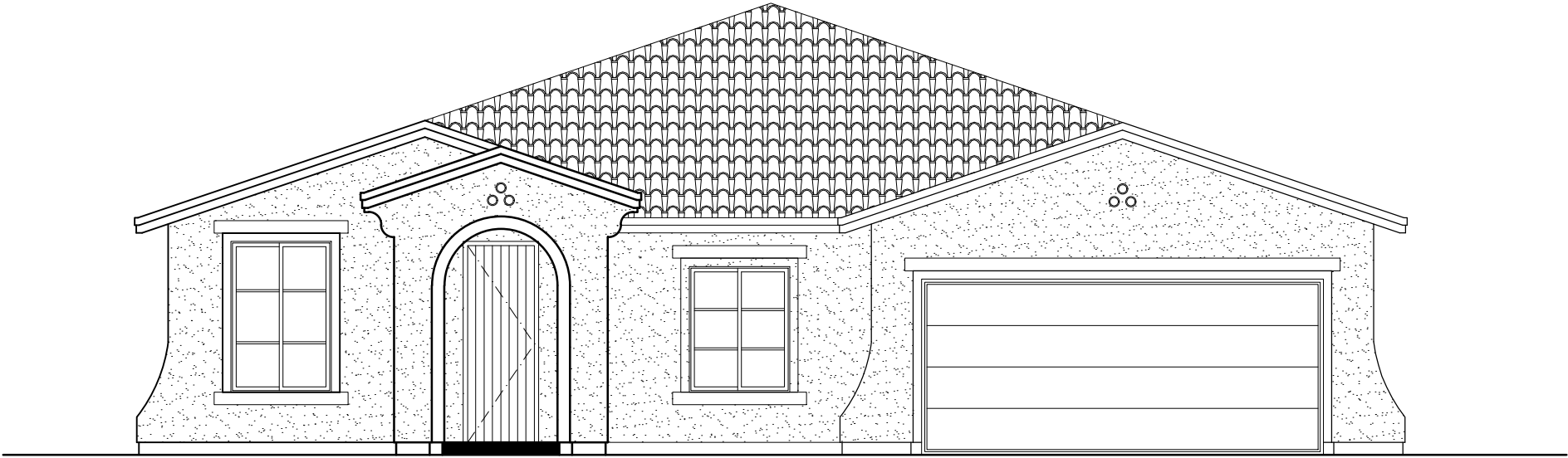
CONTEMPORARY



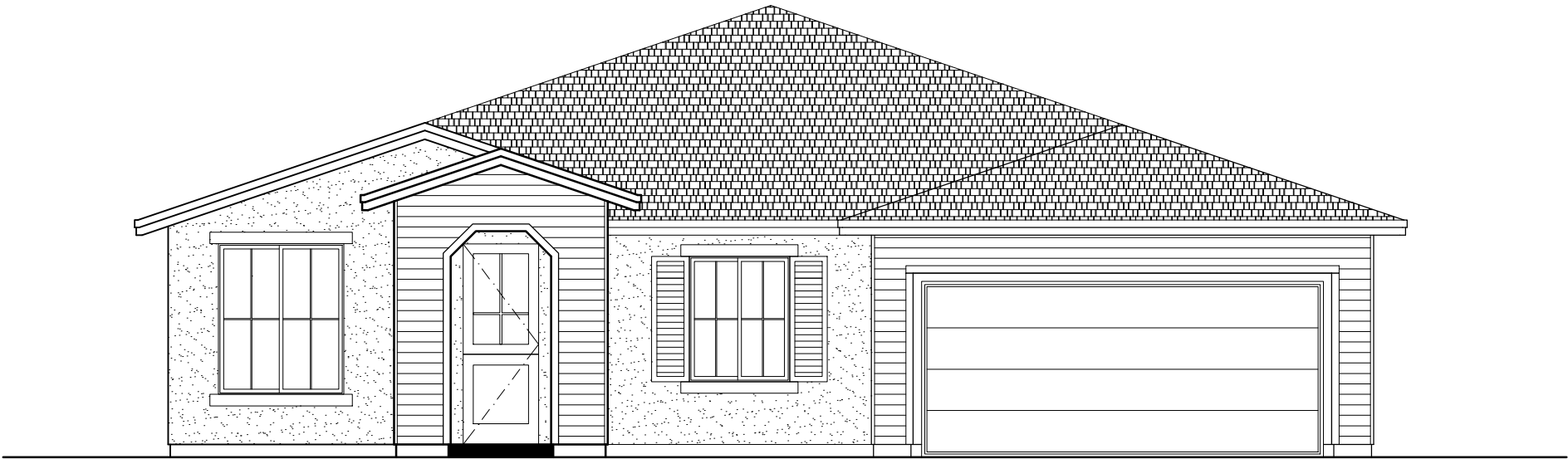
MODERN



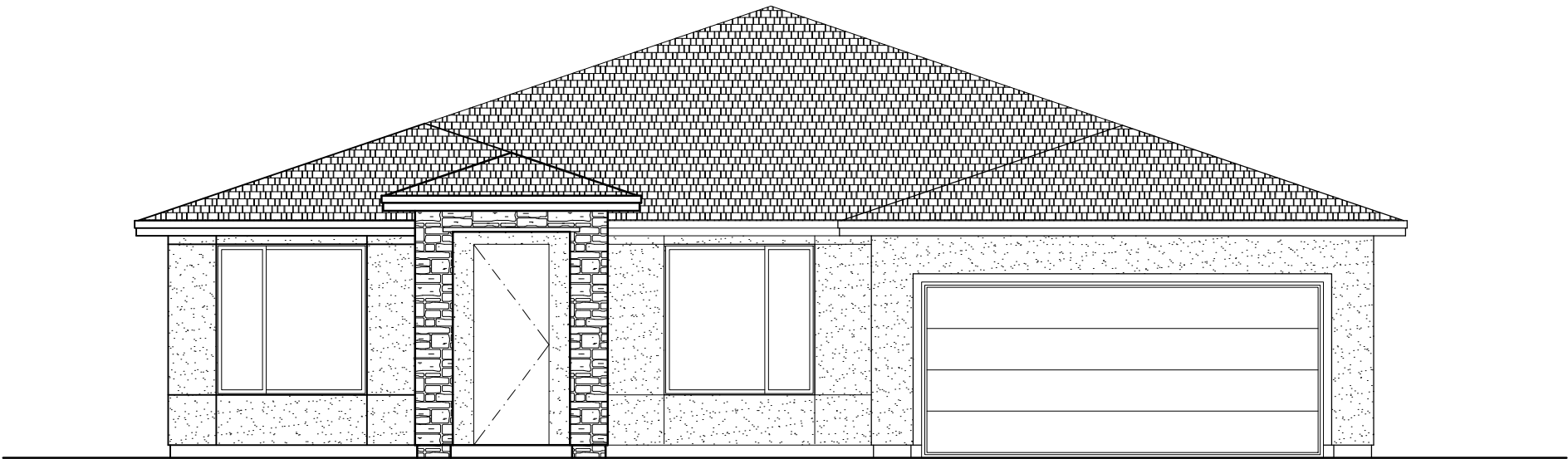
The second floor plan shows a central hallway leading to two restrooms. The 'POWDER BATHROOM' is located at the front of the house, featuring a toilet, a sink, and a small shower area. The 'BATHROOM' is located at the back of the house, featuring a bathtub, a toilet, and a sink. A door is shown leading from the hallway into the living area.



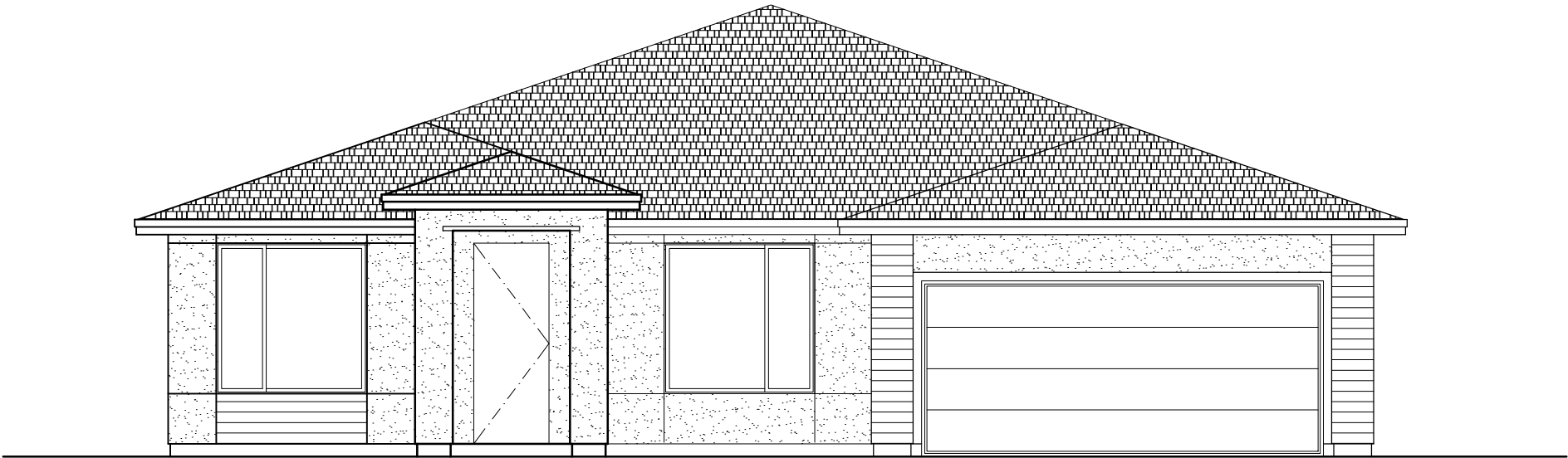
SPANISH



FARMHOUSE



CONTEMPORARY



MODERN