



CITY OF HUGHSON
PLANNING COMMISSION MEETING
 CITY HALL COUNCIL CHAMBERS
 7018 Pine Street, Hughson, CA

AGENDA
TUESDAY, SEPTEMBER 15, 2015 – 6:00 P.M.

CALL TO ORDER: Chair Julie Ann Strain

ROLL CALL: Chair Julie Ann Strain
 Vice Chair Mark Fontana
 Commissioner Sanjay Patel
 Commissioner Karen Minyard
 Commissioner Ken Sartain

Staff Present: Jaylen French, Community Development Director
 Marilyn Castaneda, Interim City Clerk
 Monica Streeter, Deputy City Attorney

FLAG SALUTE: Chair Julie Ann Strain

1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken):

Members of the audience may address the City Council on any item of interest to the public pertaining to the City and may step to the podium, state their name and city of residence for the record (requirement of name and city of residence is optional) and make their presentation. Please limit presentations to five minutes. Since the City Council cannot take action on matters not on the agenda, unless the action is authorized by Section 54954.2 of the Government Code, items of concern, which are not urgent in nature can be resolved more expeditiously by completing and submitting to the City Clerk a "Citizen Request Form" which may be obtained from the City Clerk.

2. PRESENTATIONS: NONE.

3. NEW BUSINESS:

3.1: Approve the Minutes of the Regular Meeting of August 18, 2015.

4. PUBLIC HEARING TO CONSIDER THE FOLLOWING:

- 4.1: Recommend that the City Council Adopt Ordinance No. 2015-XX, Adopting the Dollar General Development Agreement
- 4.2: Consider a Conditional Use Permit Application for the Sale of Alcoholic Beverages at the Proposed Dollar General Retail Store in the C-2, General Commercial Zone

5. INFORMATION ITEMS: NONE.

6. CORRESPONDENCE: NONE.

7. COMMENTS:

- 7.1: Staff Reports and Comments: (Information Only – No Action)
- 7.2: Commissioner Comments; (Information only- No Action)

ADJOURNMENT:

WAIVER WARNING

If you challenge a decision/direction of the City Council in court, you may be limited to raising only those issues you or someone else raised at a public hearing(s) described in this Agenda, or in written correspondence delivered to the City of Hughson at or prior to, the public hearing(s).

UPCOMING EVENTS:

September 19	▪ Hughson Fruit and Nut Festival, 10 a.m-5 p.m
September 20	▪ Hughson Fruit and Nut Festival, 10 a.m-4 p.m
September 28	▪ City Council Meeting, @ City Hall Chambers, 7:00 p.m
October 12	▪ City Council Meeting, @ City Hall Chambers, 7:00 p.m
October 13	▪ Parks & Recreation Commission Meeting @ City Hall Chambers. 6:00 p.m

RULES FOR ADDRESSING Planning Commission

Members of the audience who wish to address the Planning Commission are requested to complete one of the forms located on the table at the entrance of the Council Chambers and submit it to the City Clerk. **Filling out the card is voluntary.**

AFFIDAVIT OF POSTING

DATE: September 10 , 2015 **TIME:** 5:00 pm

NAME: Marilyn Castaneda **TITLE:** Interim City Clerk

**AMERICANS WITH DISABILITIES ACT/CALIFORNIA BROWN ACT
NOTIFICATION FOR THE CITY OF HUGHSON**

This Agenda shall be made available upon request in alternative formats to persons with a disability; as required by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12132) and the Ralph M. Brown Act (California Government Code Section 54954.2).

Disabled or Special needs Accommodation: In compliance with the Americans with Disabilities Act, persons requesting a disability related modification or accommodation in order to participate in the meeting and/or if you need assistance to attend or participate in a City Council meeting, please contact the City Clerk's office at (209) 883-4054. Notification at least 48-hours prior to the meeting will assist the City Clerk in assuring that reasonable accommodations are made to provide accessibility to the meeting.

Notice Regarding Non-English Speakers:

Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Hughson City Council shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

General Information: The Hughson Planning Commission meets in the Council Chambers on the *third* Tuesday of each month at 6:00 p.m., unless otherwise noticed.

Council Agendas: The Planning Commission agenda is now available for public review at the City's website at www.hughson.org and City Clerk's Office, 7018 Pine Street, Hughson, California on the Friday, prior to the scheduled meeting. Copies and/or subscriptions can be purchased for a nominal fee through the City Clerk's Office.

Questions: Contact the City Clerk at (209) 883-4054



CITY OF HUGHSON
PLANNING COMMISSION MEETING
 CITY HALL COUNCIL CHAMBERS
 7018 Pine Street, Hughson, CA

Minutes
TUESDAY, AUGUST 18, 2015 – 6:00 P.M.

CALL TO ORDER: Chair Julie Ann Strain

ROLL CALL:

Present: Chair Julie Ann Strain
 Vice Chair Mark Fontana
 Commissioner Sanjay Patel
 Commissioner Karen Minyard

Absent: Commissioner Ken Sartain

Staff Present: Jaylen French, Community Development Director
 Marilyn Castaneda, Interim City Clerk
 Monica Streeter, Deputy City Attorney

FLAG SALUTE: Chair Julie Ann Strain

1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken):

Members of the audience may address the City Council on any item of interest to the public pertaining to the City and may step to the podium, state their name and city of residence for the record (requirement of name and city of residence is optional) and make their presentation. Please limit presentations to five minutes. Since the City Council cannot take action on matters not on the agenda, unless the action is authorized by Section 54954.2 of the Government Code, items of concern, which are not urgent in nature can be resolved more expeditiously by completing and submitting to the City Clerk a "Citizen Request Form" which may be obtained from the City Clerk.

2. PRESENTATIONS:

2.1: Update on Parks and Recreation Opportunities in City - Proposed Basketball Court in Starn Park.

Director French presented item 2.1 to the Commission, as well as answered the Commission’s questions regarding retaining walls, the use of lighting and safety bollards for the proposed basketball court.

3. NEW BUSINESS:

3.1: Approve the Minutes of the Regular Meeting of July 7, 2015.

PATEL/ MINYARD 4-0 (SARTAIN – ABSENT) motion passes to approve the Minutes of the Regular Meeting of July 7, 2015.

3.2: Review and Discuss Current City General Plan Designations and Zoning Classifications

Director French presented item 3.2 to the Commission as well as opened up discussion with Commission.

Vice Chair Fontana expressed strong desire for a grocery store to be established within the Hughson limits, whether downtown or elsewhere even though some traffic might be taken away from the downtown.

Commissioner Patel, Commissioner Minyard and Commissioner Strain agreed with Vice Chair Fontana on the idea of a grocery store. Also added the grocery store will attract more people to come to Hughson therefore attracting them to the downtown Hughson restaurants.

The Commission discussed markets such as Wal-Mart (Neighborhood Market), IGA, S-Mart and O’Brien’s Market as choices.

4. PUBLIC HEARING TO CONSIDER THE FOLLOWING: NONE.

5. INFORMATION ITEMS: NONE.

6. CORRESPONDENCE:

Director French updated Commission on Dollar General’s progress, including demolition and construction schedule (start 8/20/15 and be completely done by the end of the calendar year). Hughson Avenue, east of the High School should be done mid next week, including the sidewalks.

ADJOURNMENT:

Chair Strain adjourned this meeting at 7:24 P.M.

JULIE STRAIN, CHAIR

DOMINIQUE SPINALIE ROMO,
City Clerk



PLANNING COMMISSION
AGENDA ITEM NO. 4.1
SECTION 4: PUBLIC HEARING

Meeting Date: September 15, 2015
Subject: Recommendation that City Council adopt Ordinance No. 2015-XX Adopting the Dollar General Development Agreement
Enclosures: Ordinance No. 2015-XX
Presented By: Jaylen French, Community Development Director

Recommendation:

Recommend that the City Council adopt Ordinance No. 2015-XX, an Ordinance of the City Council of the City of Hughson adopting the Development Agreement relating to the development of the Dollar General retail building at Hughson Avenue and 4th Street.

Background and Overview:

To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the legislature of the State of California adopted Section 65864 of the Government Code, the "Development Agreement Statute", which authorizes the City to enter into a development agreement with any person/entity having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

Further, Hughson Ordinance No. 90-59, the City of Hughson approved the ability to enter into, or amend Development Agreements with the owner and/or developer of real property within the City.

Dollar General, through the Embree Group, the "developer" has applied for, and the City has approved, all necessary land use approvals, entitlements and allocations that will allow the development of a 9,100 square foot retail store on Hughson Avenue at the terminus of 4th Street without need to obtain further discretionary approvals.

Development of the project in accordance with the project approvals will provide for orderly growth consistent with the goals, policies and other provisions of the City's General Plan. This Development Agreement will eliminate uncertainty in planning and provide for the orderly development of the project site; ensure funding for and

progressive installation of necessary and desired public infrastructure and improvements.

In exchange for these benefits to the City, together with the public benefit that will result from the development of the project pursuant to this Agreement, the developer desires to receive the assurance that it may proceed with the project in accordance with the prior project approvals, this agreement and ordinances, resolutions, policies and regulations of the City current in effect, without any unfair or unforeseen changes to fees or regulations.

Discussion:

This agreement primarily addresses the development impact fees required to develop a commercial retail store in the City's downtown. The project site, at the terminus of 4th Street on Hughson Avenue, is an infill site—meaning there is development on all four sides; and a redevelopment site—meaning three buildings, containing businesses, were on site in the past. The City's current Development Impact Fee Nexus Study, August 2006 is designed to recover the cost of building the infrastructure necessary to service new development. In regards to City services, the infrastructure necessary to serve the development (the retail store) is currently in place; further, three businesses were utilizing these services and paying towards the maintenance and operations of this infrastructure for many years.

Through City staff's research, it was determined that the Development Impact Fees cannot be modified to accommodate infill or redevelopment projects due to the requirements of Proposition 218 and the Nexus Study, 2006. Therefore, the City and the Developer agreed to enter into a Development Agreement.

The Developer Agreement identifies the Development Impact Fees to be paid by the Developer, which are as follows:

Public Facility Fee: \$16,325.40

This is the full charge for a proposed 9,100 square foot commercial building

Storm Drain Fee: \$19,860.06

This is two-thirds (2/3) charge for a proposed 9,100 square foot commercial building. The three businesses formally on the site total approximately 3,000+ square feet. The Storm Drain fee is designed to recover the costs associated with the provision and expansion of storm drainage infrastructure. Although no new offsite infrastructure is required, the proposed building is approximately two-thirds larger than the former three buildings on site and in consideration of the fact that the Storm Drain fee is based on square feet and the increased square footage has a direct impact on the service, meaning there is less impervious surface, it is appropriate to charge the additional amount.

Sewer Fee: \$0.00

The Sewer impact fee is designed to recover the costs of building the infrastructure necessary to extend sewer service to new development. Although, the sewer fee is also based on square footage, the additional square footage does not directly impact the service. The three former businesses had at least three restrooms, whereas the proposed Dollar General building will have two, therefore, the overall impact to the sewer system will likely be decreased.

Water Fee: \$0.00

The Water impact fee is assessed in order to recover the costs of building the infrastructure necessary to extend water service to new development. Although, the water fee is based on square footage, the additional square footage does not directly impact the service. It is estimated that the three former businesses would use the same amount of water or more than the proposed Dollar General retail store.

Street Fee: \$0.00

The Street improvement impact fee is assessed to recover the costs associated with providing street and traffic improvements to new development. Although, the street fee is based on square footage of the building, the additional square footage does not have a direct impact on the existing street system, which has ample capacity to handle any increase in traffic. In addition, as part of the proposed project, the Developer is installing street and traffic improvements to the intersection at Hughson Avenue and 4th Street.

Community Enhancement Fee: \$5,396.30

This is the full charge for a proposed 9,100 square foot commercial building.

**CITY OF HUGHSON
CITY COUNCIL
ORDINANCE NO. 2015-XX**

**AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
HUGHSON ADOPTING THE DEVELOPMENT AGREEMENT BY AND
BETWEEN THE CITY OF HUGHSON AND DG-HUGHSON, CA-1-UT, LLC.
(DOLLAR GENERAL / EMBREE ASSET GROUP)**

WHEREAS, pursuant to Hughson Ordinance No. 90-59, the City of Hughson (“City”) may enter into, or amend a Development Agreement with the owner and/or developer of real property within the City; and

WHEREAS, Dollar General, through the Embree Asset Group, hereinafter referred to as the “Developer”, has applied for, and the City has approved, all necessary land use approvals, entitlements and allocations that will allow the development of a 9,100 square foot retail store on Hughson Avenue without the need to obtain further discretionary approvals; and

WHEREAS, the City’s current Development Impact Fee Nexus Study, 2006, is designed to recover the cost of building the infrastructure necessary to service new development, not infill or redevelopment sites; and

WHEREAS, the Developer has requested a Development Agreement to address Development Impact Fees as it relates to new development compared to infill/redevelopment; and

WHEREAS, the City and Developer have negotiated a Development Agreement by and between the City of Hughson and DG-Hughson, CA-1-UT. (Dollar General / Embree Asset Group) (hereinafter “Development Agreement”), a copy of which is attached as Attachment 1; and

WHEREAS, the City Planning Commission on September 15, 2015, determined that the provisions of the Development Agreement are consistent with the City’s General Plan and all other applicable plans, policies, and regulations of the City; and

WHEREAS, the Council City desires to approve the agreement and enact it as an uncodified ordinance and upon adoption authorize the City Manager to execute the Development Agreement.

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF HUGHSON DOES
ORDAIN AS FOLLOWS:**

Section 1. The Development Agreement attached as Attachment 1 and incorporated by this reference as though fully set forth herein is hereby enacted as an uncodified ordinance.

Section 2. This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the city or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3. If any provision of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The city council hereby declares that it would have adopted this ordinance irrespective of the validity of any particular portion thereof.

Section 4. This ordinance shall become effective thirty (30) days after its final passage.

Section 5. Within fifteen (15) days after its final passage, the City Clerk shall cause this ordinance to be posted in full accordance with Section 36933 of the Government Code.

The foregoing ordinance was introduced and the title thereof read at the regular meeting of the City Council of the City of Hughson held on September 28, 2015, and by a unanimous vote of the council members present, further reading was waived.

On motion of councilperson _____, seconded by councilperson _____, the second reading of the foregoing ordinance was waived and this ordinance was duly passed by the City Council of the Hughson City Council at a regular meeting thereof held on October 12, 2015 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

MATT BEEKMAN, Mayor

ATTEST:

DOMINIQUE SPINALE, City Clerk

RECORDING REQUESTED BY:

CITY MANAGER
CITY OF HUGHSON

AND WHEN RECORDED MAIL TO:

CITY MANAGER
CITY OF HUGHSON
P. O. BOX 9
HUGHSON, CA 95326

**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF HUGHSON AND
DG-HUGHSON, CA-1-UT, LLC.
(DOLLAR GENERAL / EMBREE ASSET GROUP, INC.)**

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**DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF HUGHSON AND DG-HUGHSON, CA-1-UT, LLC.
(DOLLAR GENERAL / EMBREE ASSET GROUP, INC.)**

THIS DEVELOPMENT AGREEMENT (hereinafter the "Agreement") is entered into this ___ day of _____, 2015, by and between the CITY OF HUGHSON, a municipal corporation organized and existing under the laws of the State of California (hereinafter the "City"), and DG-HUGHSON, CA-1-UT, LLC., a Utah corporation (hereinafter called the "Developer"), pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California. Developer and City are, from time to time, hereinafter referred to individually as a "party" and collectively as the "parties."

**I.
RECITALS**

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person/entity having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

B. Pursuant to Government Code Section 65865(c), the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements and this Development Agreement has been processed, considered and executed in accordance with those City rules and regulations.

C. DG-Hughson, CA-1-UT, LLC., is a Utah corporation.

D. Embree Asset Group, Inc., owns fee title to the property located in the City as diagrammed in Exhibit "A" attached hereto, and more particularly described in Exhibit "B" attached hereto and incorporated herein (referred to as the "Project Site"). Developer represents that it has an equitable or a legal interest in the Project Site and that all other persons holding legal or equitable interests in the Project Site are to be bound by the Agreement.

E. It is the intent of Developer to develop the Project Site, in accordance with the Conditions of Approval for the Project Site, attached hereto as Exhibit "C", and the terms and conditions of this Agreement. Such development of the Project Site is hereinafter called the "Project".

F. The Project Site is designated in the City's General Plan as Downtown Commercial and is zoned C-2 (General Commercial).

G. The Developer has applied for, and the City has approved, various land use approvals, entitlements and allocations relating to the development of the Project and Project Site that will allow Developer to build the Project without need to obtain further discretionary approvals. These actions are collectively referred to as "Project Approvals" and include, without limitation, the following: the Conditions of Approval thereto, current zoning of the Project Site, and the current General Plan designation of the Project Site.

H. The Project Approvals and this Agreement have all been properly reviewed and assessed by the City pursuant to the California Environmental Quality Act, California Public Resources Code section 21000 et seq. ("CEQA"), and the "CEQA Guidelines," 14 California Administrative Code section 15000 et seq., promulgated thereunder.

I. Development of the Project Site in accordance with the Project Approvals will provide for orderly growth consistent with the goals, policies, and other provisions of the City's General Plan.

J. On September 15, 2015, following a duly noticed public hearing, the Planning Commission recommended that the City Council approve this Agreement.

K. On _____, 2015, following a duly noticed public hearing, the City Council introduced Ordinance No. __ - __, approving this Agreement. On _____, 2015, the City Council adopted Ordinance No. __ - __, approving this Agreement, made appropriate findings that the provisions of this Agreement are consistent with the City's General Plan as well as all other applicable plans, policies and regulations of the City and authorized execution of this Agreement. In adopting Ordinance No. __ - __, the City Council also determined that the environmental documentation for the Project adequately addressed the environmental review of each of the Project Approvals and of this Agreement. A copy of the City Council's Ordinance No. __ - __ is attached hereto as Exhibit "D".

L. For the reasons recited herein, Developer and the City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Project Site; ensure funding for, and progressive installation of, necessary public improvements; provide funding for traffic improvements, and community facilities, and efforts to combat homelessness; provide for public services appropriate to the development of the Project; ensure attainment of the maximum effective utilization of resources within the City at the least economic cost to its citizens; and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

M. In exchange for these benefits to the City, together with the public benefits that will result from the development of the Project and Project Site pursuant to this Agreement and the Project Approvals, Developer desires to receive the assurance that it may proceed with the Project in accordance with the Project Approvals, this Agreement and the ordinances, resolutions, policies and regulations of the City in effect on the Effective Date of this Agreement, pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants and provisions set forth herein, the parties hereto agree as follows:

II.
AGREEMENT

Section 1. General Provisions.

A. Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

B. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project and Project Site, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto, as further set forth in Section 14 of this Agreement.

C. Effective Date. This Agreement shall become effective upon the thirtieth (30th) day following the adoption by the City Council of Ordinance No. __ - __ approving this Agreement, or the date upon which this Agreement is executed by Developer and by the City, whichever is later (the "Effective Date").

D. Term. The term of this Agreement shall commence upon the Effective Date and shall extend until the second (2nd) anniversary of the Effective Date or until the "Project Buildout" as hereinafter defined, whichever is earlier, unless said term is otherwise modified by circumstances set forth in this Agreement or by the mutual consent of the parties hereto. For purposes of this Agreement, "Project Buildout" shall mean the date on which a Certificate of Occupancy (or comparable instrument) is issued for the last Project improvement or other structure to be constructed pursuant to the development plans. Following the expiration of said term, this Agreement shall be deemed terminated and of no further force and effect, except as may be specified otherwise herein.

Section 2. Definitions.

In this Agreement, unless the context otherwise requires: "City" shall have that meaning set forth in the introductory paragraph preceding the Recitals.

A. "Development Agreement Statute" shall have that meaning set forth in Recital paragraph A of this Agreement.

B. "Effective Date" shall have that meaning set forth in Section 1.C. of this Agreement.

C. "Project" shall have that meaning set forth in Recital paragraph E of this Agreement.

D. "Project Site" shall have that meaning set forth in Recital paragraph D of this Agreement.

E. "Developer" shall have that meaning set forth in the introductory paragraph preceding the Recitals and in Recital paragraph C of this Agreement and includes the Developer's successors-in-interest.

F. "Project Approvals" shall have that meaning set forth in Recital paragraph G of this Agreement.

Section 3. Obligations of Developer.

A. In General. In consideration of City entering into this Agreement, Developer agrees that it will comply with this Agreement, with all Project Approvals and the Conditions of Approval. The parties acknowledge that the execution of this Agreement by City is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and the Project Approvals, or in the Conditions of Approval as specifically set forth herein, and Developer's waiver of any legal or equitable rights or remedies it might allege to have in a lawsuit challenging the terms and conditions of this Agreement and/or the Project Approvals. Developer shall pay those fees, make those dedications and otherwise be subject to those conditions/exactions expressly prescribed in this Agreement and in the Project Approvals, or in the Conditions of Approval.

B. Conditions of Approval. Developer hereby agrees to complete and comply with the Conditions of Approval, attached here to as Exhibit "C" which are a part of the Project Approvals, except as such Conditions of Approval are modified and/or clarified herein.

C. It is understood and agreed that whenever approval of the City Engineer is required in the Project Approvals, Conditions of Approval, or this Agreement, the approval of the City Community Development Director shall also be required. Such approvals shall not be unreasonably withheld.

D. Fees. Fees to be paid by Developer, are and shall be, as specified in Exhibit D attached hereto and incorporated herein. Developer shall also pay fees expressly specified in this Agreement or the Project Approval, such as, but not limited to, those specified in Section 4.C.ii, of this Agreement. Such fees shall be collected at the time of building permit issuance.

Section 4. Development of Project and Project Site.

A. General Permitted Uses and Subsequent Approvals. The permitted uses of the Project Site; the density and intensity of use; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and location of public improvements; location of public utilities; and other terms and conditions of development applicable to the Project and Project Site, shall be those set forth in this Agreement, the Project Approvals and amendments thereto.

B. Development Criteria. The following specific conditions govern the Project and use of the Project Site and supersede any conflicting City regulations:

i. Permitted Uses. Permitted uses of the Project Site are limited to those uses allowed by the Project Approvals.

ii. Maximum Density or Intensity of Use. The minimum density/intensity of use is that shown and in the Project Approvals.

iii. Site Development Standards. The site development standards [for example, building setbacks, lot coverage limitations, parking standards, etc.] for the Project are in accordance with City and State codes now in effect and shall be consistent with those set forth in the Project Approvals.

C. Rules, Regulations and Official Policies.

i. Effective Standards. The rules, regulations, standards, official policies and conditions governing the permitted uses of the Project and/or Project Site, including those addressing the density and intensity of use, design, improvement, construction and building standards, occupancy and specifications applicable to the Project and/or Project Site and all on-site and off-site improvements and appurtenances in connection therewith, shall be those in force upon the Effective Date of this Agreement, except as otherwise provided by this Agreement.

ii. Notwithstanding any Project Approvals to the contrary, the City may charge, and Developer shall pay all ministerial fees (for example, processing and inspection fees), collected at the building permit stage or other approval stage for subsequent site specific approvals, building permits and other similar permits which are in force and effect on a City-wide basis at the time application is submitted for such permits. Such ministerial fees do not include impact fees or other discretionary fees collected at the building permit stage or other approval stage. Such ministerial fees and charges shall be no more than the estimated reasonable cost to the City for performing the work for which the particular fee or charge is paid pursuant to Government Code Sections 66014 et seq.

D. Police Power and Taxing Power. The City, through the exercise of either its police power or its taxing power, shall not establish, enact or impose any additional conditions, dedications, fees, general taxes, special taxes and other exactions, policies, standards, laws or regulations which directly relate to the development of the Project and/or Project Site except as provided in the Project Approvals and/or this Agreement. However, the conditions, dedications, fees, general taxes, special taxes and exactions, policies, standards, laws and regulations applicable to the Project and/or Project Site as provided in this Agreement and in the Project Approvals shall be subject to modification or re-negotiation by City as a result of any amendment to the Project Approvals or this Agreement. Subsequent discretionary Project approvals, discretionary actions or other discretionary entitlements, if needed, are not subject to the vesting protections provided by this Agreement and are subject to all applicable City rules, regulations, standards, official policies and conditions in existence at the time such subsequent approval, action or other entitlement is granted by the City.

E. Changes in State, Federal and Local Laws. As provided in Government Code Section 65869.5, and notwithstanding any other provision of this Agreement, this Agreement shall not preclude the application to the Project and/or Project Site of changes in City laws, regulations, plans or policies, to the extent that such changes are (1) specifically mandated and required by changes in state or Federal laws or regulations; or (2) in compliance with Government Code §§ 66498.1 et seq. In the event such changes in Federal, State or local laws

prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such Federal, State or local laws and City and Developer shall take such action as may be required pursuant to Section 8.D (Enforced Delay; Extension of Time of Performance) and Section 6 (Cooperation-Implementation) of this Agreement.

Section 5. Amendment.

A. Amendment of Agreement. This Agreement may be amended from time to time in whole or in part by mutual consent of the original parties or their successors in interest, in accordance with the provisions of Government Code Sections 65867, 65867.5 and 65868, provided that:

i. Due Process Exemptions. Any amendment to this Agreement which does not relate to the term, permitted uses, provisions for reservation and dedication of land, or conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by Developer or any conditions or covenants relating to the Project or use of the Project Site shall not require notice or public hearing before the parties may execute an amendment hereto; and

ii. Amendment Exemptions. Any administrative amendment of the Project Approvals, or other related approvals or entitlements pursuant to Section 5.B.1. of this Agreement by either the Developer, or the City, the City Manager or his designee, whichever is applicable, shall not require an amendment to this Agreement.

Section 6. Cooperation-Implementation.

A. Processing. Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, City shall promptly commence and diligently proceed to complete all steps required or necessary for the implementation of this Agreement and the development by Developer of the Project and Project Site in accordance with this Agreement and the Project Approvals provided Developer submits required information and applications in accordance with City rules and regulations.

Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and cause Developer's planners, engineers, and all other consultants to submit, in a timely manner, all required materials and documents therefor.

No future modification of the Municipal Code or any ordinance or regulation, by initiative or otherwise, which limits or regulates the rate, timing, or sequence of development over time shall be applicable to the Project or Project Site, and City agrees that the development of the Project and Project Site shall be exempt from growth control measures, development moratoria, allocation methods and/or such other measures which affect the rate, timing, or sequence of development, whether enacted by the City or by vote of the electorate of the City, which would stop or delay the development of the Project or Project Site. Notwithstanding the

previous sentence, any moratorium, or moratoria, which is, or are, enacted to preserve the public health, safety, or welfare, shall apply to the Project and Project Site.

Section 7. Cooperation in the Event of Legal Challenge.

In the event of any legal or equitable act, action or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding. In the event City and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel, although the Developer shall be responsible for all City costs incurred in relation to defending against such an action or proceeding, as further provided for in Section 9 of this Agreement.

Section 8. Default; Remedies; Termination.

A. General Provisions. Failure or unreasonable delay by Developer to perform any term, provision or condition of this Agreement for a period of thirty (30) days after written notice thereof from the City shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. The time of notice shall be measured from the date of certified mailing. Said notice shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

During any period of curing, the Developer shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist and the noticing party shall take no further action.

Subject to the foregoing, after notice and expiration of the 30-day period without cure, the City, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council in the manner set forth in Government Code Sections 65865, 65867 and 65868.

Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the City, at its option, may give written notice of termination of this Agreement to the Developer by certified mail. Written notice of termination of this Agreement shall be effective immediately upon certified mailing to the defaulting party.

Evidence of Developer's default may also arise in the course of the regularly scheduled annual review of this Agreement as described in Section 8.B. below.

Failure or delay by City in giving notice of default pursuant to this Section shall not constitute a waiver of any default. Except as otherwise provided in this Agreement, any failure

or delay by the City in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. Annual Review. The City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every 12 months from the date this Agreement is entered into, at which time the Developer, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of this Agreement. Such review shall be performed pursuant to Article 5 of the City's "Procedures and Requirements for Consideration of Development Agreements."

C. Default by City. In the event City defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law, including, without limitation, specific performance.

D. Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting State or Federal laws or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project and/or Project Site pursuant to this Agreement shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

E. Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof; to recover damages for any default; enforce by specific performance the obligations and rights of the parties hereto; or to obtain any remedies consistent with the purpose of this Agreement. Such legal actions shall be initiated in the Superior Court of the County of Stanislaus, State of California or in the appropriate Federal District Court.

F. Applicable Law/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such actions, taking depositions and discovery, and all other necessary costs incurred in the litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such

actions is prosecuted to a final judgment. If a legal action is brought by a third party, Sections 7 and 9 of this Agreement shall apply.

Section 9. Hold Harmless Agreement.

Developer hereby agrees to defend and hold the City and its elected and appointed officers, agents, employees and representatives harmless from claims, costs and liabilities for any personal injury, death or property damage which arises, directly or indirectly, as a result of the construction of the Project, Project Site or operations performed under this Agreement by Developer or by Developer's contractors, subcontractors, agents or employees, whether such operations were performed by Developer or any of Developer's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors.

In addition, Developer shall defend City and its elected and appointed representatives, officers, agents and employees against actions arising out of such personal injury, death, or property damage which is caused, or alleged to have been caused, by reason of Developer's activities in connection with the Project or Project Site. Developer further agrees to defend and save and hold City harmless from any and all claims, costs and liabilities arising as a result of any legal action or proceeding brought against the City which challenges the validity of this Agreement, any of the terms and conditions herein, the Project Approvals, or the sufficiency of environmental review pursuant to CEQA.

This hold harmless agreement applies to all damages or claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this section regardless of whether or not City prepared, supplied or approved plans or specifications, or both, for the Project and/or Project Site.

Section 10. Insurance.

Before commencing work pursuant to any City-approved permit or other entitlement relating to the Project, Developer shall obtain the insurance required under this Section and receive the approval of the City Manager or his designee as to form, amount and carrier. Developer shall maintain the insurance during the term of this Agreement. The insurance shall name the City as an additional insured and extend to the City, its elective and appointive boards, commissions, officers, agents, employees and representatives and to the Developer and each contractor and subcontractor performing work on the Project.

A. Compensation Insurance. Developer shall maintain workers' compensation insurance for all persons employed at Project Site. Developer shall require each contractor and subcontractor similarly to provide workers' compensation insurance for their respective employees. Developer agrees to indemnify the City for damage resulting from Developer's failure to take out and maintain such insurance.

B. Public Liability and Property Damage Insurance. Developer shall maintain public liability insurance in an amount not less than \$1,000,000.00 for injuries (including death) to any one person and subject to the same limit of any one occurrence.

C. Evidence of Insurance. Developer shall furnish City, concurrently with the execution of this Agreement, satisfactory evidence of the insurance required. Developer shall also provide evidence that the carrier is required to give the City at least ten (10) days' prior written notice of the cancellation or reduction in coverage of a policy.

Section 11. No Agency, Joint Venture or Partnership.

It is specifically understood and agreed to by and between the parties hereto that: (1) the subject development is a private development; (2) the City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that the City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals; (3) Developer shall have full power over and exclusive control of the Project and Project Site herein described, subject only to the limitations and obligations of Developer under the Project Approvals and this Agreement; and (4) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 12. Miscellaneous Provisions.

A. Non-Conflicting Regulations. The City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable General Plan, Specific Plan, zoning ordinance, subdivision ordinance or any other land use ordinances or building ordinances, resolutions or other rules, regulations or policies adopted by the City which changes, alters or amends the rules, regulations and policies governing permitted uses of the Project Site or density of design of the Project or Project Site applicable to the development of the Project and/or Project Site at the Effective Date of this Agreement. This Agreement shall not prevent the City in subsequent actions applicable to the Project and/or Project Site, from applying new rules, regulations and policies which do not conflict with those rules, regulations, and policies applicable to the Project and/or Project Site as set forth herein.

B. Waiver of Challenges to Project Approvals. In executing and accepting the benefits of this Agreement, Developer, its successor in interest, etc. expressly waives any legal or equitable right to challenge any project approvals, conditions of approval or other act, entitlement, approval, covered under this Agreement including acts of protest pursuant to California Government Code sections 66008 and 66009.

C. Consistency with General Plan. City hereby finds and determines that execution of this Agreement furthers the public health, safety, and general welfare of the community and that the provisions of this Agreement are consistent with the General Plan.

D. Severability. If any term, provision, covenant or condition of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

E. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

F. Construction. Each reference in this Agreement to this Agreement or the Project Approvals shall be deemed to refer to the named document or plan as such document or plan may be amended from time to time, whether or not the particular reference refers to such possible amendment.

G. No Presumption. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

H. Other Miscellaneous Terms. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signatory of this Agreement, the signatory obligations are joint and several.

Section 13. Notices.

Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given an received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto in the manner described in this Section, designate any other address in substitution of the address to which such notice or communication shall be given. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address. Such notices or communications shall be given to the parties at their addresses set forth below:

IF TO CITY, TO:

CITY MANAGER
CITY OF HUGHSON
P.O. BOX 9
HUGHSON, CA 95326

IF TO DEVELOPER, TO:

EMBREE ASSET GROUP, INC.
4747 WILLIAMS DRIVE
GEORGETOWN, TX 78633

WITH COPIES TO:

DANIEL J. SCHROEDER, ESQ.
NEUMILLER & BEARDSLEE
P.O. BOX 20
STOCKTON, CA 95201-3020

COMMUNITY DEVELOPMENT DIRECTOR
CITY OF HUGHSON
P.O. BOX 9
HUGHSON, CA 95326

Section 14. Assignment, Transfer and Notice.

Upon City's written consent, Developer shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement and the Project Approvals to third parties acquiring an interest or estate in the Project and/or Project Site, or any portion thereof including, but not limited to, purchasers or long-term ground lessees of parcels, or facilities located within the Project Site. Developer shall give at least thirty (30) days' prior written notice to the City of its intention to assign or transfer any of its interests, rights or obligations under this Agreement. If all or any portion of the Project or Project Site is transferred by Developer to any person or entity, the transferee shall succeed to all of the Developer's rights and obligations under this Agreement as they affect the right to proceed with the development of that transferred portion of the Project or Project Site and the transferee shall automatically assume all obligations of Developer, past, present and future, hereunder which relates to the transferred Property. Unless Developer is released in writing by City, a transfer of all or any part of the Project Site to any other person or entity shall not release Developer from any obligation under this Agreement.

Section 15. Estoppel Certificate.

Within ten (10) days following any written request which either party may make from time to time, the other party to this Agreement shall execute and deliver to the requesting party a statement certifying that:

A. This Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification;

B. There are no current uncured defaults under this Agreement or specifying the dates and nature of any such default; and

C. Any other reasonable information requested. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the party which fails to deliver such statement that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting parties.

Section 16. Entire Agreement; Counterparts and Exhibits.

This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of _____ (____) pages, including _____ (____) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waiver's of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the city and the Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit "A"	Project Site
Exhibit "B"	Legal Description of the Project Site
Exhibit "C"	Original Conditions of Approval
Exhibit "D"	Fees and Credits

No later than ten (10) days after the City enters into this Agreement, the City Clerk shall at Developer's expense record an executed copy of this Agreement in the Official Records of the County of Stanislaus.

Section 17. Time of Essence.

Time is of the essence of this Agreement.

Section 18. Exercise of Discretion.

Where the terms of this Agreement require approval, consent, written consent, determinations, or the exercise of discretion by the parties (together "discretion"), such discretion shall be exercised reasonably and shall not be unreasonably withheld.

Section 19. Waiver of Claim.

For the purposes of this Section 19, "party" includes the representatives, heirs, successors, assignees, officers, agents, employees and independent contractors of the party. Each party, with respect to the other party, in consideration of the entering into of this Agreement, and the mutual promises, conditions and covenants herein, hereby completely releases and forever discharges the other party from all claims, rights, demands, actions, obligations, and causes of action of any and all kind, nature, and character, known or unknown, which the releasing party may now have or may have had against the other party prior to the Effective Date, arising from, or related to, any claims of lack of nexus, or claims of failing to comply with the requirements of California Government Code § § 66000-66025, or the negotiation of this Agreement.

Each party understands the word "claims" to include all actions, claims, and grievances whether actual or potential, known or unknown. All such claims are forever barred by this Agreement without regard to whether those claims are based on any alleged breach of a duty arising in contract or tort.

Each party has read and understands the following language of Section 1542 of the California Civil Code which provides:

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

Having reviewed this provision, each party nevertheless voluntarily releases the other party from all liability, as set forth in this Section 19.

Initial: _____
CITY

Initial: _____
DEVELOPER

/ / / /

/ / / /

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

CITY:

CITY OF HUGHSON

DEVELOPER:

DG-Hughson, CA-1-UT, LLC.,
a Utah corporation

By: _____

Title: _____

By: _____

Title: _____

ATTEST:

Dominique Spinale-Romo
City Clerk, City of Hughson

APPROVED AS TO FORM:

Daniel J. Schroeder, City Attorney
City of Hughson

ACKNOWLEDGMENT

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 _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ACKNOWLEDGMENT

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 _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

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STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

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STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

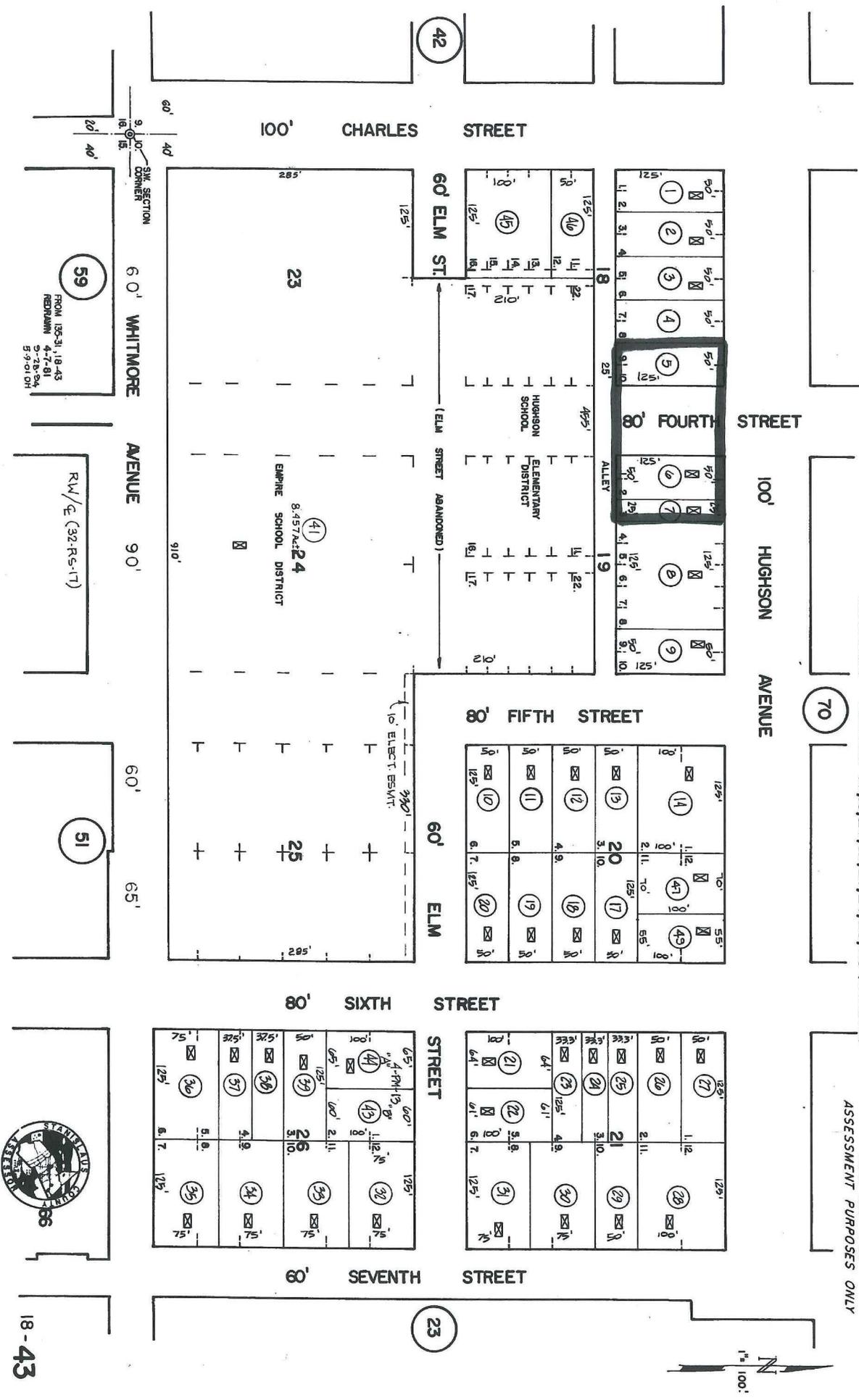
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

EXHIBIT "A"
PROJECT SITE MAP/DIAGRAM

PORTION SW 1/4 SECTION 10 T.4S R.10E M.D.B.&M.
 HUGHSON - BLOCKS 18,19,20,21,23,24,25,26 (03M18)

THIS MAP FOR
 ASSESSMENT PURPOSES ONLY



SW SECTION
 9 01
 16' 15"
 20' 40'
 60' WHITMORE AVENUE 90'
 60' 59
 FROM 135-31, 18-43
 REBRAWN 4-7-81
 5-28-84
 5-9-01 OH

RW/E (32-RS-17)

60' 51
 65'



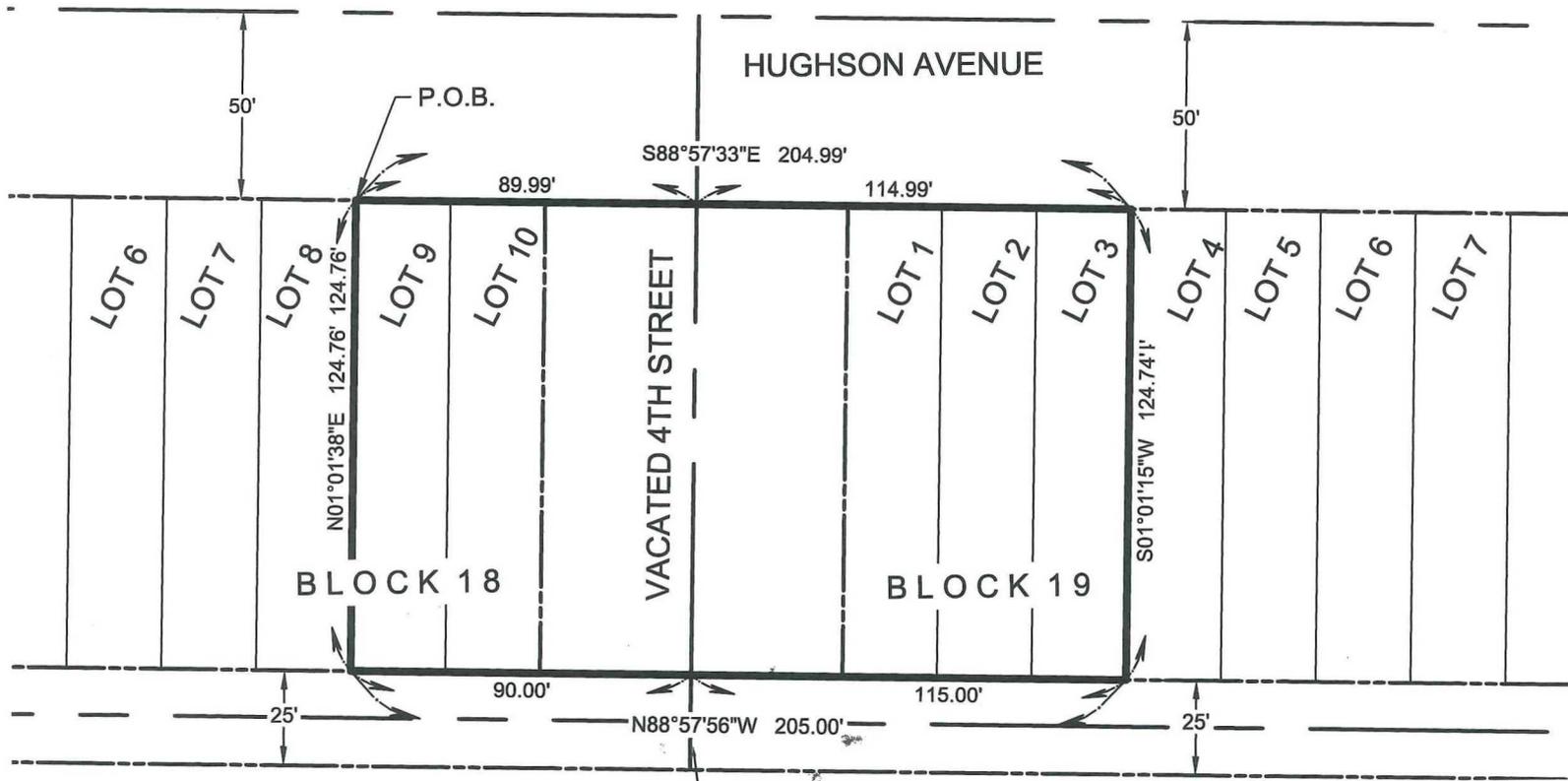


EXHIBIT "C"

LEGEND

- LEASE AREA
- - - - STREET CENTERLINE
- RIGHT OF WAY LINE
- P.O.B. POINT OF BEGINNING

PREPARED BY:
BASE
 CONSULTING GROUP, INC.
 16453 E. MANNING AVE.
 REEDLEY, CA 93654
 PH: (559) 637-1544

NOTE: THIS MAP IS FOR ILLUSTRATION PURPOSES ONLY

LOT MERGER EXHIBIT

ALL OF LOTS 9 AND 10 IN BLOCK 18 AND ALL OF LOTS 1, 2 AND 3 IN BLOCK 19 AND A PORTION OF THE PUBLIC R.O.W. KNOWN AS FOURTH ST. LYING BETWEEN THE SOUTHERLY R.O.W. LINE OF HUGHSON AVE. AND THE NORTHERLY R.O.W. LINE OF AN ALLEY, ALL OF THE "PLAT OF HUGHSON," ACCORDING TO THE MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY RECORDER OF STANISLAUS COUNTY, STATE OF CALIFORNIA

05/13/2015	DRAWN BY: JDC	JOB NO.: 14077
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EXHIBIT "B"
LEGAL DESCRIPTION OF THE PROJECT SITE

EXHIBIT "A"
LEGAL DESCRIPTION
(LEASE AREA)

ALL OF LOTS NINE (9) AND TEN (10) IN BLOCK EIGHTEEN (18) AND ALL OF LOTS ONE (1), TWO (2) AND THREE (3) IN BLOCK NINETEEN (19) AND A PORTION OF THE PUBLIC RIGHT-OF-WAY KNOWN AS FOURTH STREET LYING BETWEEN THE SOUTHERLY RIGHT-OF-WAY LINE OF HUGHSON AVENUE (A 100-FOOT WIDE ROAD) AND THE NORTHERLY RIGHT-OF-WAY LINE OF AN ALLEY (A 25-FOOT WIDE ROAD), ALL OF THE "PLAT OF HUGHSON," ACCORDING TO THE MAP THEREOF, FILED IN THE OFFICE OF THE COUNTY RECORDER OF STANISLAUS COUNTY, STATE OF CALIFORNIA, ON NOVEMBER 12, 1907 IN VOLUME 3 OF MAPS, AT PAGE 18, LYING WITHIN THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 10, TOWNSHIP 4 SOUTH, RANGE 10 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEING ALSO DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHWEST (NW) CORNER OF LOT NINE (9) IN BLOCK EIGHTEEN AS SHOWN ON SAID MAP, THENCE EASTERLY ALONG OF THE NORTH LINE OF SAID LOTS NINE (9) AND TEN (10) AND THE EASTERLY PROLONGATION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF HUGHSON AVENUE, SOUTH 88°57'33" EAST, A DISTANCE OF 89.99 FEET TO ITS INTERSECTION WITH THE CENTERLINE OF SAID FOURTH STREET;

THENCE EASTERLY ALONG SAID PROLONGATION OF SOUTHERLY RIGHT-OF-WAY LINE OF HUGHSON AVENUE AND THE NORTH LINE OF SAID LOTS ONE (1), TWO (2), AND THREE (3), SOUTH 88°57'33" EAST, A DISTANCE 114.99 FEET TO THE NORTHEAST CORNER OF LOT THREE (3) IN BLOCK NINETEEN (19) OF SAID MAP;

THENCE, ALONG THE EASTERLY LINE OF SAID LOT THREE (3), SOUTH 01°01'15" WEST, A DISTANCE OF 124.74 FEET TO THE SOUTHEAST CORNER OF SAID LOT THREE (3);

THENCE, ALONG THE SOUTH LINE OF SAID LOTS ONE (1), TWO (2) AND THREE (3) AND THE WESTERLY PROLONGATION OF THE NORTHERLY RIGHT-OF-WAY LINE OF THE ALLEY OF SAID BLOCK NINETEEN (19), NORTH 88°57'56" WEST, A DISTANCE OF 115.00 FEET TO ITS INTERSECTION WITH THE CENTERLINE OF SAID FOURTH STREET;

THENCE, ALONG SAID PROLONGATION OF NORTHERLY RIGHT OF WAY LINE OF SAID ALLEY AND THE SOUTH LINE OF SAID LOTS NINE (9) AND TEN (10), NORTH 88°57'56" WEST, A DISTANCE OF 90.00 FEET, TO THE SOUTHWEST CORNER OF SAID LOT NINE (9);

THENCE, ALONG THE WESTERLY LINE OF SAID LOT NINE (9) NORTH 01°01'38" EAST, A DISTANCE OF 124.76 FEET TO THE **POINT OF BEGINNING**.

PREPARED BY:
BASE CONSULTING GROUP, INC.



 5/13/2015

NEIL E. THONESEN
P.L.S. 8656
LIC. EXP. 12/31/2013

DATE

EXHIBIT "C"
ORIGINAL CONDITIONS OF APPROVAL



**PLANNING COMMISSION
AGENDA ITEM NO. 3.1
SECTION 3: NEW BUSINESS**

Meeting Date: March 17, 2015
Subject: Consideration of Resolution No. PC 2015-01 Approving Design Review for a Proposed Dollar General Store located between 7030 and 7128 Hughson Avenue
Enclosures: Design Review Package – Proposed Dollar General Store
Presented By: Jaylen French, Community Development Director

Approved By: _____

Recommendation:

Adopt Resolution No. PC 2015-01, a Resolution of the Planning Commission of the City of Hughson approving Design Review for a proposed Dollar General store located between 7030 and 7128 Hughson Avenue.

Background and Overview:

City staff has received an application for Design Review for a proposed Dollar General store located between 7030 and 7128 Hughson Avenue. Although the design review process may be considered subjective in nature, the City does have an adopted set of Commercial Design Guidelines, which provide the objective criteria for which approval or denial should be based.

The purpose of the Design Review process, as outlined in Section 17.04.020 of the Hughson Municipal Code (HMC) is "...to promote orderly, attractive and harmonious development, recognize environmental limitations on development, stabilize land values and investments and promote general welfare. The [design] review process aims to achieve these goals by preventing uses or structures which would not meet the specific intent, clauses or performance standards of this title or which would not properly relate to their sites, surrounding, traffic circulation, or environmental setting."

The Planning Commission may approve, conditionally approve or deny the project based on the recommendation forwarded by the planning officer. The Commission shall approve a development review application only if the following findings can be made:

1. The proposed project is consistent with the General Plan, any adopted design expectations or design guidelines and the Hughson Municipal Code.
2. The proposed architecture and site design complements the surrounding neighborhood and/or district.
3. The proposed project is consistent with the general scale of structures and buildings in the surrounding neighborhood and/or district.

Discussion:

This application is for the construction of a new, proposed Dollar General store located on Hughson Avenue. Staff has worked closely and diligently with Embree Group, the design and construction contractor for Dollar General on the site orientation, pedestrian access and aesthetics of the building to ensure the building is in conformance with the Commercial Design Guidelines and matches the vision for the downtown.

Staff believes the three (3) aforementioned findings can be made for approval of Design Review. The following is a summary of the details of the design.

General Design

It is staff's opinion that the proposed building and site improvements before the Commission constitute a positive addition to the downtown and to the community.

Per the Commercial Design Guidelines, the building's scale and massing are appropriate for the downtown and fit well next to adjacent and nearby buildings. The façade of the proposed building includes good variation in materials, design details and articulation. Further, the building includes decorative awnings and light fixtures as well as additional architectural detailing along the longer side of the building—the side facing Hughson Avenue. The proposed materials—although most are veneer—and color of the building also are appropriate in the downtown.

The building is adjacent and oriented to the sidewalk, with a zero setback, to continue and enhance the pedestrian atmosphere of the downtown. In addition, one of two entrances to the building is on Hughson Avenue.

Landscaping / Pedestrian Improvements

As proposed, the site and surrounding areas of the project include enhanced landscaping and pedestrian amenities, including landscaped bulb-outs on the northern side of the 4th Street and Hughson Avenue intersection, as well as enhanced landscaping in front of the building in the public right-of-way on Hughson Avenue. The bulb outs are an extension of the improvements made at the 3rd Street and Charles Street intersections with Hughson Avenue and will include the same trees and shrubs for uniformity. This project extends these improvements one additional block in the downtown. Another product of the improvements will be improved ADA accessibility.

Also, due to the orientation of the building at the terminus of 4th Street and due to the location of the existing crosswalks, parking is not possible in front of most of

the building; therefore, the proposal includes the installation of landscaping in these areas to enhance the aesthetic quality and usability of the area.

Parking

Per HMC Section 17.03.060(G), Landscaping in Parking Lots, the following requirements shall apply to all open off-street parking areas:

1. At least two trees shall be provided for every 10 parking spaces. The trees shall be planted in tree wells measuring at least six feet by six feet and shall be evenly dispersed throughout the parking lot.
2. At least 60 percent of the paved surface of a parking lot shall be shaded by tree canopies at high noon within 15 years after acquiring building permits for the parking lot. The trees to be planted to develop such a canopy shall be in accordance with HMC 17.03.092 and the city's street tree plan. Plans submitted for development review shall show the estimated tree canopies after 15 years of growth and the total area in square feet of the area shaded by tree canopies. To determine the area shaded by canopies, the following method shall be used:
 - a. Determine the total area of the parking lot, deducting any areas covered by structures;
 - b. Measure the shaded area as the area projected to be directly under each tree canopy after 15 years, including both paved areas and landscape planters; and
 - c. All landscaping shall be protected by front wheel retention strips.

The proposed Dollar General project currently does not include a sufficient number of trees in the parking area to meet the requirement per this section of the HMC. As proposed, Dollar General is proposing 29 parking spaces—although the requirement downtown is for 18 total spaces. This HMC section calls for two (2) trees per 10 spaces, meaning a minimum of four (4) trees are needed, but perhaps six (6). Additionally, the canopies of the trees, after 15 years, must demonstrate 60% shade coverage of the paved parking area. Therefore, a condition of approval has been included in the Resolution as part of the Planning Commission's approval to ensure that ultimately these requirements are met.

As strictly interpreted, this section applies to the downtown; however, it is City staff's opinion that there should—at a minimum—be flexibility for this requirement in the downtown area for landscaping requirements for off street parking on zero setback lots similar to those allowed under HMC Section 17.03.048(E)(6)(a). This is supported by two (2) additional factors:

1. Parking in downtown is treated differently in both the HMC and in planning documents. The HMC includes a provision reducing the number of parking spaces required for commercial uses.
2. No current commercial parking area in the downtown includes trees.

Staff will be recommending that the City amend the HMC to extend the exception in HMC Section 17.03.048(E)(6)(a) to downtown onsite parking.

It should be noted that the project is proposing nine (9) additional trees outside of the parking area.

Signage

The proposed signage meets the requirement of one (1) square foot of sign area for every one (1) lineal foot of building frontage. In addition, Dollar General is proposing to include a monument sign which also meets the requirements of the signage code.

Conditions of Approval

Since this is a discretionary approval, it is acceptable to put conditions on a Design Review Application. As described in a previous section of this staff report, "Parking", the proposed project does not meet the requirements of the HMC. To address this City staff is proposing to place the following condition of approval on the project:

1. Prior to issuance of City building permit, the project shall conform to HMC Section 17.03.060(G), Landscaping in Parking Lots.

EXHIBIT "D"
FEEES AND CREDITS



**PROPOSED DOLLAR GENERAL
CITY OF HUGHSON DEVELOPMENT IMPACT FEES**

IMPACT FEES	FEE
Public Facility Fee	\$16,325.40
Storm Fee	\$19,860.06
Sewer Fee	\$0.00
Water Fee	\$0.00
Street Fee	\$0.00
Community Enhancement	\$5,396.30

September 2015



**PLANNING COMMISSION
AGENDA ITEM NO. 4.2
SECTION 4: PUBLIC HEARING**

Meeting Date: September 15, 2015
Subject: Consideration of Conditional Use Permit Application for the Sale of Alcoholic Beverages at the proposed Dollar General Retail Store in the C-2, General Commercial Zone
Enclosures: Resolution No. PC 2015-XX
Presented By: Jaylen French, Community Development Director

Staff Recommendation:

Recommend that the Planning Commission adopt Resolution No. PC 2015-XX, approving a Conditional Use Permit with the specified Conditions.

Background and Overview:

On August 14, 2015, the City received a Conditional Use Permit (CUP) application for the sale of alcoholic beverages at the proposed Dollar General retail store in the C-2, General Commercial zone.

A CUP application provides an opportunity to review the location, site development or conduct of certain land uses, activities and structural features that generally have a distinct impact on the area in which they are located or are capable of creating special problems for bordering properties unless given careful attention. Use permits may be granted by the planning commission under the provisions of Hughson Municipal Code (HMC) Chapter 17.04.12.

Alcoholic beverage sales are a conditionally permitted use in the C-2, General Commercial zone.

Discussion:

Dollar General is proposing the sale of alcoholic beverages—beer and wine—at the proposed retail store located on Hughson Avenue at the terminus of 4th Street in the C-2, General Commercial zone.

The sale of alcoholic beverages for off-premises consumption, in some cases including distilled spirits—i.e. ‘hard’ alcohol—is permitted in five (5) existing locations in the C-2, General Commercial zone.

Dollar General has applied for an Alcoholic Beverage License with the State Department of Alcoholic Beverage Control (ABC), which would be issued should the Planning Commission approve the CUP.

Staff’s recommendation is approve the CUP with the following conditions:

1. Business maintains ABC license throughout operation of the retail store and meets and maintains all ABC licensing requirements indefinitely.
2. A Hughson business license is maintained throughout operation of the retail store.

**CITY OF HUGHSON
PLANNING COMMISSION
RESOLUTION NO. PC 2015-XX**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HUGHSON
CONDITIONALLY APPROVING A CONDITIONAL USE PERMIT APPLICATION FOR
THE SALE OF ALCOHOLIC BEVERAGES AT THE PROPOSED DOLLAR GENERAL
STORE IN THE C-2, GENERAL COMMERCIAL ZONE**

WHEREAS, Dollar General submitted an application for a Conditional Use Permit for the sale of alcoholic beverages in the City's C-2, General Commercial zone pursuant to Hughson Municipal Code (HMC) Section 17.04.012; and

WHEREAS, a conditional use permit provides an opportunity to review the location, site development or conduct of certain land uses, activities and structural features that generally have a distinct impact on the area in which they are located or are capable of creating special problems for bordering properties unless given careful attention; and

WHEREAS, notice of the application was advertised in the local newspaper—the Hughson Chronicle—to solicit public input; and

WHEREAS, the Hughson Planning Commission has determined that the use conforms to the requirements and the intent of the City's zoning code and general plan.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Hughson, pursuant to HMC 17.04.012(E)(1) does hereby conditionally approve the issuance of a Conditional Use Permit Application for the sale of alcoholic beverages at the proposed Dollar General retail store in the C-2, General Commercial zone subject to the following conditions:

1. Business maintains ABC license throughout operation of the retail store and meets and maintains all ABC licensing requirements indefinitely.
2. A Hughson business license is maintained throughout operation of the retail store.

PASSED AND ADOPTED by the Planning Commission of the City of Hughson at its regularly scheduled meeting on this 15th day of September 2015 by the following roll call vote:

AYES: .

NOES: .

ABSTENTIONS: .

JULIE STRAIN, Chair

ATTEST:

DOMINIQUE SPINALE, City Clerk

Alcoholic Beverage Consulting

August 14, 2015

Sandy Cortez
City of Hughson
P.O. Box 9
Hughson, CA 95326

CITY OF HUGHSON
AUG 19 2015
RECEIVED

RE: Dollar General Store #16169 – CUP Application for Beer & Wine Sales

Sandy:

I am a consultant to Dollar General Stores assisting them with permits and licenses necessary to sell beer and wine from their stores in California. Enclosed are the following:

- 1) Completed Land Use Application;
- 2) Signed Consent of Applicant and Property Owner
- 3) Check #4790136 in the amount of \$945.00 payable to "City of Hughson";
- 4) Statement of Operations dated 8/14/15;
- 5) 3 – 11" x 17" copies of the site plan;
- 6) 3 – 11" x 17" copies of the floor/fixture plan.

I look forward to working with you on this application and please call or email me if you have any questions.

Sincerely,



Steve Rawlings
SER@Rawlingspm.com
(951) 667-5152



FILE NUMBER:

City of Hughson
7018 Pine Street
P.O. Box 9
Hughson, CA 95326
Phone: (209) 883-4054 Fax: (209) 883-2638

LAND USE APPLICATION

APPLICANT INFORMATION Dolgen California, LLC #16169

- 1. Name of Applicant: Attn: Tax-Licensing Dept. 2. Phone: 615-855-4000
- 3. Address of Applicant: 100 Mission Ridge
- 4. City: Goodlettsville 5. State: TN 6. Zip code: 37072

Applicant Rep: Steve Rawlings, Alcoholic Beverage Consulting, Phone: 951-667-5152, Email: SER@Rawlingspm.com

PROPERTY OWNER INFORMATION (If Not Applicant)

- 7. Name of Property Owner: DG-Hughson, CA-1-UT, LLC 8. Phone: 512-819-4738
- 9. Address of Property Owner: 4747 Williams Drive
- 10. City: Georgetown 11. State: TX 12. Zip code: 78633

APPLICATION TYPE:

- 13. Parcel Map
- 14. Subdivision Map
- 15. Use Permit
- 16. Variance
- 17. Zone Change
- 18. General Plan Change
- 19. Other (State Request): _____

PROJECT SITE INFORMATION

- 20. Address of Project: 4th & Hughson Avenue
- 21. Assessor's Parcel Number 018-043-005 & 006 22. Present Zoning: C-2
- 23. Project Site Size: .58 acres 24. Square Footage of Project: 9,026 sf building

PROJECT INFORMATION

- 30. Request: Finding of public convenience or necessity and permit to sell beer & wine for off-site consumption.
- 31. Reason for Request (Attach Additional Sheets if Necessary):
Municipal Code Section 17.02.032 requires a CUP for off-site alcohol sales.

PROJECTS ENVIRONMENTAL INFORMATION

32. List and describe any other related permits and other public approvals required for this project, including those required by city, county, regional, state, and federal: _____

CA Dept. of Alcoholic Beverage Control Type 20 License

33. Associated Project: N/A

34. Anticipated Phasing of the Development: None

35. If residential, include the number of units, schedule of units sizes, range of sale prices or rents, and type of household size expected: _____

36. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area and loading facilities: Neighborhood retail with 7,195 sf of sales area.

37. If industrial, indicate type, estimated employment per shift, and loading facilities: _____

38. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project: _____

39. If the project involves a variance, conditional use or rezoning application, state this and indicate clearly why the application is required: Hughson Municipal Code Sect. 17.02.32

Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as needed)

YES NO

- 40. Change in existing features of any bays tidelands, beaches, lakes or hills, or substantial alteration of ground contours.
- 41. Change in scenic views or vistas from existing residential areas or public lands or roads.
- 42. Change in pattern, scale or character of general area of project.
- 43. Significant amounts of solid waste or litter.
- 44. Change in dust, ash, smoke, fumes or odors in vicinity.
- 45. Change in ocean, bay, lake, stream, or ground water quality, or quantity, or alteration of existing drainage patterns.
- 46. Substantial change in existing noise or vibration levels in the vicinity.
- 47. Site on filled land or on slope of ten percent or more.
- 48. Use or disposal of potentially hazardous materials, such as toxic substances, flammables or explosives.
- 49. Substantial change in demand for municipal services (police, fire, water, sewage, etc.).
- 50. Substantial increase fossil fuel consumption (electricity, oil, natural gas, etc.).
- 51. Relationship to a larger project or series of projects.

52. Describe the project site as it exists before the project including information on topography, soil stability, plants and animals and any cultural, historical, or scenic aspects. Describe any existing structures on the site, and the use of the structures. (If needed on a separate sheet please fully describe question 52): _____
Site is newly constructed 9,026 sf retail building.

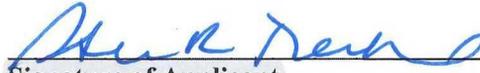
53. Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), and scale of development (height, frontage, set-back, rear yard, etc.) (If needed on a separate sheet please fully describe question 53): _____

North - Retail
South - Elementary School
East - Retail
West- Retail

SIGNATURE PAGE

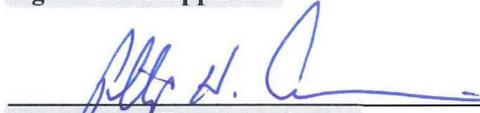
CONSENT OF APPLICANT AND PROPERTY OWNER(S)

By signing this Statement of Understanding, I, Dolgen California, LLC, hereby acknowledge the City of Hughson's fee structure and agree to abide by these standards, and certify under penalty of perjury that the statements furnished above and in the attached exhibits present the date and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.



Signature of Applicant

Date



Signature of Property Owner

7/20/2015

Date

By: DG - Hughson, CA-1-UT, LLC
By: Embree Asset Group Inc.
Philip H. Annis, President

AGREEMENT TO DEFEND AND INDEMNIFY THE CITY OF HUGHSON

I(We) Dolgen California, LLC, the applicant(s), do hereby agree that should the City of Hughson take any administrative or legislative action approving the application or any related administrative or legislative action necessary to allow the project to proceed, the applicant(s) will defend, indemnify and hold harmless the City, its agents, officers and employees harmless from any claim action or proceeding to attach, set aside, void or annul the approval granted by the City, including the reasonable attorneys' fees and costs incurred by the City to defend such claim, action or proceeding so long as the City promptly notifies the applicant(s) of any such claim, action or proceeding and the City cooperates fully in the defense.

FOR PLANNING COMMISSION USE ONLY

Date Received: _____ By: _____ Hearing Date: _____
Fee Amount: _____ Receipt #: _____ Plot Plan Required: (yes) (no)
Action Taken: _____
Notices Mailed: Date: _____ Notices Published: Date: _____ By: _____
 CEQA Review Notice of Exemption Negative Declaration Environmental Impact Report
Planning Commission Action: _____
City Council Action: _____

**Statement of Operations for
Dollar General Store #16169
Hughson, CA
8/14/15**

Proposed Use: Sell beer, wine and spirits for offsite consumption within 9,100 square foot grocery store and consumer goods store.

Hours of Operation: 7 days per week from 7:00 a.m. to 11:00 p.m.

Alcohol Sales Area: Will not exceed 5% of gross floor area of the store.

Alcohol Containers: All beer, wine coolers and malt liquor products will be sold in manufacturer pre-packaged multi-unit quantities.

Security Measures: Surveillance cameras are located throughout the sales area as well as storage area. Employees go through corporate training for alcohol sales and must input date of birth into cash register to complete any alcohol transaction.

Average number of employees per shift: 5 - 10

About Dollar General:

Dollar General Corporation is the nation's largest small-box discount retailer with nearly 11,000 locations in 35 states. Dollar General is publicly traded on the NYSE under the ticker symbol: DG. Dollar General makes shopping for everyday needs simpler and hassle-free by offering a carefully edited assortment of the most popular brands at low everyday prices in small, convenient locations. Dollar General ranks among the largest retailers of top-quality brands made by America's most-trusted manufacturers, such as Procter & Gamble, Kimberly Clark, Unilever, Kellogg's, General Mills and Nabisco. Dollar General delivers a smarter, easier shopping solution accessible to more consumers. Dollar General's goal is to provide customers a better life and employee's opportunity and a great working environment.

Dollar General Market Concept:

Dollar General stands for convenience, quality brands and low prices. Dollar General's successful prototype makes shopping a truly hassle-free experience. Dollar General designs small neighborhood stores with carefully edited merchandise assortments to make shopping simpler. We don't carry every brand and size, just the most popular ones.

Shopping at Dollar General saves consumers time by staying focused on life's simple necessities: fresh fruit and vegetables, bread, milk, eggs, soup, cereal, coffee, sodas, laundry detergent, paper towels, soap, shampoo, socks and underwear as well as alcohol. The average Dollar General customer completes their shopping trip in less than 10 minutes.