

CITY OF MERCED
Planning & Permitting Division

STAFF REPORT: #16-20

AGENDA ITEM: 4.1

FROM: Kim Espinosa,
Planning Manager

PLANNING COMMISSION
MEETING DATE: Sept. 7, 2016

PREPARED BY: Julie Nelson,
Associate Planner

SUBJECT: **Design Review Application #16-01**, initiated by Capital Rivers Commercial and the Vernal Group, on behalf of “J” Street Plaza Company, a California general partnership, property owner. This application involves a request to demolish the existing building and construct a new 2,791-square-foot fast-food restaurant with a drive-thru at the southwest corner of Martin Luther King, Jr. Way and 15th Street (1445 Martin Luther King, Jr. Way) within a Thoroughfare Commercial (C-T) Zone. *PUBLIC HEARING*

ACTION: Approve/Disapprove/Modify

- 1) Environmental Review #16-24 (Categorical Exemption)
- 2) Design Review #16-01

SUMMARY

The project site is located at the southwest corner of Martin Luther King, Jr. Way and 15th Street (Attachment A). There is an existing building at this site which was most recently used as the Merced Poker Room, but has historically been used as a restaurant. The existing building would be demolished to make way for the proposed 2,791-square-foot fast-food restaurant (Popeye’s Louisiana Kitchen). The restaurant would have 48 seats and a drive-thru window.

The site is located within the City’s Design Review Boundary which requires all new construction to be reviewed by the Planning Commission acting as the Design Review Commission. The proposed use is a principally permitted use within the Thoroughfare Commercial (C-T) zone. The Planning Commission’s role is to review the design elements of the site and the building, not to approve the land use.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve Environmental Review #16-24 and Design Review #16-01 (including the adoption of the Resolution at Attachment I) subject to the following conditions:

- *1) The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Exhibits 2 and 3 (elevations), and Exhibit 4 (landscape plan) -- Attachments B, C, D, and E, except as modified by the conditions.
- *2) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.

- *3) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
- *4) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- *5) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
- *6) All parking lot and building lighting shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent parcels.
- *7) The applicant shall work with the City's Refuse Department to determine the proper location for a trash enclosure and if a recycling container will be required to comply with AB 341. The container(s) shall be enclosed within a refuse enclosure built to City Standards.
- *8) Bicycle racks (inverted-U-style) shall be provided at a minimum ratio equal to 5% of the vehicular parking spaces.
- *9) As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards, installing street trees, and other relevant City of Merced/State/Federal standards and regulations.

- *10) The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
- *11) The project shall comply with the requirements of the California Urban Level of Flood (200-year Flood) and all FEMA flood zone requirements, where applicable.
- *12) All necessary permits shall be obtained from Caltrans for any work done within the Caltrans right-of-way.
- *13) Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
- *14) The project shall comply with all the Post Construction Standards required to comply with state requirements for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
- *15) All landscaping in the public right-of-way and on-site shall comply with State Water Resources Control Board Resolution No. 2015-0032 "To Adopt an Emergency Regulation for Statewide Urban Water Conservation" and the City's Water Conservation Ordinance (Merced Municipal Code Section 15.42). Xeriscape or artificial turf shall be used in place of natural sod or other living ground cover. If turf is proposed to be installed in park-strips or on-site, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed. All irrigation provided to street trees, parking lot trees, or other landscaping shall be provided with a drip irrigation or micro-spray system.
- *16) All landscaping shall be installed prior to occupancy and shall thereafter be maintained in a healthy and aesthetic manner. Parking lot trees are required at a minimum rate of one tree per each six parking spaces. The type of shade trees used for parking lot trees shall be selected from the City's approved tree list and meet the City's minimum requirements of casting shade in the parking lot. Landscaping shall be installed as shown on Exhibit 4 (Attachment E of Staff Report #16-20), except as modified by these conditions.
- *17) All signing shall comply with the City's Sign Ordinance. Signing on the building shall be calculated based on the tenant's primary and secondary building frontage. One-square-foot of signing for each lineal foot of primary frontage and ½ square-foot of signing for each lineal foot of secondary frontage is allowed. The maximum sign area for the site shall not exceed 500 square feet. A freeway sign in compliance with Merced Municipal Code Section 17.36.810 is allowed. Any signs installed on the existing pylon sign on the adjacent property shall be in compliance with the agreement entitled "Pylon Signs Easement Declaration," recorded as Document #41922 on November 19, 1998 (refer to Attachment G of Staff Report #16-20) and the City's sign ordinance.
- 18) All mechanical equipment shall be screened from public view.
- 19) The premises shall remain clean and free of debris and graffiti at all times.
- 20) Outdoor seating is not shown on the site plan and is not approved with this application. Prior to any outdoor seating being installed, approval must be obtained by the Planning Department. Additional parking spaces may be required if the total number of seats for the restaurant exceeds 48.

- 21) If it is determined that the access easement running east and west from Martin Luther King, Jr. Way to the western property line is still valid, plans submitted for building permit review shall show the easement area. If the easement is still valid, all improvements shall be located outside the easement area. In addition, plans shall show the right-of-way dedication at the corner of Martin Luther King, Jr. Way and 15th Street dedicated by the deed recorded as Document #2006-057480 in Merced County Records.
- 22) A temporary banner permit shall be obtained prior to installing any temporary signs. Free-standing temporary signs (i.e., sandwich boards, A-frame signs, etc.) are prohibited.
- 23) Any music played over the outdoor speakers mounted to the building walls shall be kept to a minimum noise level so as not to travel outside the immediate area around the building.

(* Denotes non-discretionary conditions.

PROJECT DESCRIPTION

This project involves the demolition of the existing building located at the southwest corner of Martin Luther King, Jr. Way and 15th Street (1445 Martin Luther King, Jr. Way) (Attachment A) and the construction of a 2,791-square-foot fast food restaurant with 48 seats and a drive-thru window. The project site is approximately ½-acre in size.

Surrounding Uses
(Attachment A)

Surrounding Land	Existing Use of Land	City Zoning Designation	City General Plan Land Use Designation
North	In-N-Out Burger	C-G	General Commercial (CG)
South	Gas Station	C-T	Thoroughfare Commercial (CT)
East	Taco Bell (across MLK, Jr. Way)	C-T	Thoroughfare Commercial (CT)
West	House of Furniture	C-T	Thoroughfare Commercial (CT)

BACKGROUND

Building permit records indicate that a gas station was constructed at this site in 1968. In 1983 the gas station building was removed from the site and the existing building was constructed for Skippers restaurant. Once Skippers closed, several other restaurants occupied the building. The Merced Poker Room opened at this location in 2009 and recently obtained approval to relocate to the building to the north of the site at 1459 Martin Luther King, Jr. Way.

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed project complies with the General Plan designation of Thoroughfare Commercial (CT) and the zoning designation of Thoroughfare Commercial (C-T).

Traffic/Circulation

- B) The project site is located on the southwest corner of Martin Luther King, Jr. Way (arterial) and 15th Street (local road). According to the Institute of Transportation Engineers (ITE) Trip Generation Manual (8th Edition), the Average Daily Trips (ADT's) for a fast-food restaurant with a drive-thru is 19.52 trips per seat. Based on this rate, the project would generate 936 Average Daily Trips. Peak Hour Trips (PHT's) for one hour between 4 and 6 p.m. are calculated at a rate of 0.94 trips per seat, resulting in 45 PHT's.

Based on the traffic study done in 2010 as part of the *Merced Vision 2030 General Plan* update, the current traffic volume on Martin Luther King, Jr. Way from 16th Street to Highway 99 is 17,200 Average Daily Trips. This segment of Martin Luther King, Jr. Way currently operates at a Level of Service (LOS) C+ which is better than the City's standard LOS D. The projected LOS for this segment of roadway, based on the build-out of the 2030 General Plan area, is still expected to be C+. The addition of the traffic from the proposed fast-food restaurant would not cause a significant impact that would drop the level of service below C+.

The site is currently served by two driveways on Martin Luther King, Jr. Way and has two access points from the shopping center to the west of the site (refer to the location map at Attachment A). The proposed site plan would close the northern driveway on Martin Luther King, Jr. Way and the northern driveway into the shopping center. The Parcel Map recorded for this property shows an access easement running east and west allowing access to the shopping center through this parcel from Martin Luther King, Jr. Way. This easement lines up with the southern driveway from Martin Luther King, Jr. Way and the southern driveway into the shopping center (refer to Attachment E). There is some question as to whether the easement still remains. Staff will be working with the developer to determine if the easement is still valid and if it is needed or not. If the easement is still valid the area must remain clear of all improvements to provide the access granted by the easement (Condition #21).

Parking

- C) The proposed site includes 20 parking spaces to serve the restaurant. The parking requirements for a restaurant are one space for every 2 ½ seats. Based on the 48 seats provided, 20 parking spaces are needed to meet this requirement. There are ten spaces provided on the eastern side of the building and another ten spaces along the southern property line (refer to the site plan at Attachment B). The addition of any outdoor seating areas in the future would require additional parking spaces to be provided if the total number of seats exceeds 48 (Condition #20). Parking lot trees are required at a ratio of one tree for every six parking stalls (Condition #16).

Public Improvements/City Services

- D) The site is served by the City's water and sewer lines. Any missing or damaged public improvements (i.e., sidewalk, curb, gutter, etc.) would be required to be repaired or replaced (Condition #9). Because Martin Luther King, Jr. Way is part of a State Highway, permits would be required from Caltrans to do any work, including closing a driveway, on Martin Luther King, Jr. Way (Condition #12).

Building Design

- E) The building design is in keeping with Popeye's current brand design. The building has stucco walls with a stone veneer trim around the bottom and touches of a "French Louisiana" design with the use of a balcony and shutters. Awnings would cover the windows on north, east, and west elevations. Refer to Attachments C to view the colored rendering of the elevations.

The building would be 19' 6" tall with a 2 ½' tall parapet giving the building an overall height of 22' (Attachment D). The parapet would shield the view of mechanical equipment mounted on the roof. A 6-foot tall concrete block fence with a wrought-iron gate would be constructed on the south elevation. This area would enclose utility meters and other service equipment.

The main building color is a gold color (Benjamin Moore Delightful Gold). The building wall would also be treated with an anti-graffiti covering up to a height of 9' 4". The top of the building and parapet would have a red (Benjamin Moore Exotic Red) accent band. The same color band would be placed just above the stone veneer at the bottom of the building walls. The awnings over the windows would also be red.

The rear entry door on the southern elevation and a portion of the wall, where the utility equipment would be mounted, would be painted a brown color (Benjamin Moore Mocha Brown). The refuse enclosure would also be painted this color. The framing around the doors and windows would be a similar brownish color (Benjamin Moor Bronzestone).

The shutter accents and balcony would be green (Benjamin Moore Rainforest Foliage and Benjamin Moor Hunter Green, respectively). The shutters are placed on the east and west elevations and the balcony is on the west elevation over the drive-thru window.

Accent lighting is proposed on all elevations and signs are proposed to be mounted to the north, east, and west elevations.

Site Design

- F) The site is approximately ½-acre in size. The building would be setback approximately 63 feet from Martin Luther King, Jr. Way and approximately 35 feet from West 15th Street. The setback from the western property line would vary between 16 and 22 feet. The setback from the southern property line would be approximately 83 feet.

There are currently two driveways on Martin Luther King, Jr. Way and two access points into the shopping center to the west. The proposed site design eliminates the north driveway on Martin Luther King, Jr. Way and the northern access point in to the shopping center. This makes the only access point from Martin Luther King, Jr. Way approximately

150 feet south of the intersection which is better for traffic flow in the area. Staff is supportive of this design.

The design of the site would allow vehicles to enter the drive-thru lane from either Martin Luther King, Jr. Way or from the shopping center access. The drive-thru lane has enough room for the stacking of at least 7 vehicles before reaching the parking area. The drive aisle leading to the drive-thru lane is 25 feet wide which should allow enough room for vehicles to move through the drive-thru lane, but not block the parking stall located on the eastern side of the building.

Landscaping

- G) The project site would be landscaped with a mixture of shrubs, ground-cover, and trees (Attachment E). Plants include a variety of species including the Texas Privet, Indian Hawthorn, and Daylilies. River-rock and mulch will also be used near the southwest side of the building. The perimeter of the site would have dense landscaping on all sides. There are three planter areas located next to the building which would include one tree in each plant in addition to shrubs. A total of 6 parking lot trees are required. Four trees are located adjacent to the parking stalls on the southern property line and the other two parking lot trees are located in the planter areas. Per Condition #15, all landscaping must comply with local and state requirements for water conservation. Condition #16 requires that the landscaping be installed prior to occupancy.

Neighborhood Impact/Interface

- H) The site is surrounded by commercial uses. Fast-food restaurants are located to the north and east. A gas station is located to the south; and various other retail establishments, including a restaurant, are located in the shopping center to the west. This site has historically been used for retail purposes and as a fast-food restaurant. It's not anticipated that this proposal would have any negative effects on the neighborhood.

Public hearing notices were sent to all property owners within 300 feet of the site. To date, no comments have been received.

Signage

- I) The project site is located within a Thoroughfare Commercial (C-T) zone and is also within the City's Design Review Boundary and Freeway District. Property located within the C-T zone is allowed a maximum of 500 square-feet of signing. The regulations for the Design Review area allow one-square-foot of signing for each linear foot of primary building frontage and ½-square-foot of signing for each linear foot of secondary building frontage. Any signing allowed on either the primary or secondary frontage, but not used on that frontage may be considered "tertiary" signing and used on a building side that is not considered "primary" or "secondary" at a ratio of ½-square-foot per linear frontage.

As proposed, the front door of the building would face West 15th Street. Therefore, we would consider this the primary frontage. The overall frontage of the 15th Street elevation is 40' 5 ½". Therefore, a total of 40' 5 ½" of sign area would be allowed. The secondary frontage would be the building side facing Martin Luther King, Jr. Way. The length of this

frontage is 89' 2 1/2". Thus the amount of signing allowed on this elevation would be approximately 45 square feet. Any signing not used on the primary or secondary frontage could be used on the west or south elevations.

Any signing not used on the building wall, up to a maximum of 500 square feet may be used on free-standing signs. The property owner has an agreement with the shopping center owner which would allow a sign to be placed on the pylon sign used by Smart & Final. Because this site is located within the Freeway District and the use qualifies for a freeway sign, signing could be added to the pylon sign. However, the maximum amount of signing for the site could not exceed 500 square feet. Both sides of the pylon side count toward the total sign area. Condition #17 addresses signing on the property and requires all signs to be in compliance with the City's Sign Ordinance. Because we don't have a complete and exact sign package with this application, a staff level Design Review application to review the signs would be required prior to issuance of a building permit for the signs.

Environmental Clearance

- J) The Planning staff has conducted an environmental review (Environmental Review #16-24) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a Categorical Exemption is being recommended (Attachment H).

Attachments:

- A) Location Map
- B) Site Plan
- C) Colored Elevations
- D) Elevations
- E) Landscape Plans
- F) Easement Area
- G) Pylon Sign Easement Document
- H) Categorical Exemption
- I) Draft Planning Commission Resolution



Dickey's
BBQ

In 'n Out
Burger

SUBJECT
SITE

Gas
Station

Taco
Bell

Wendy's

COLONY

MARTIN LUTHER KING JR

16TH

15TH

14TH

13TH

99

99

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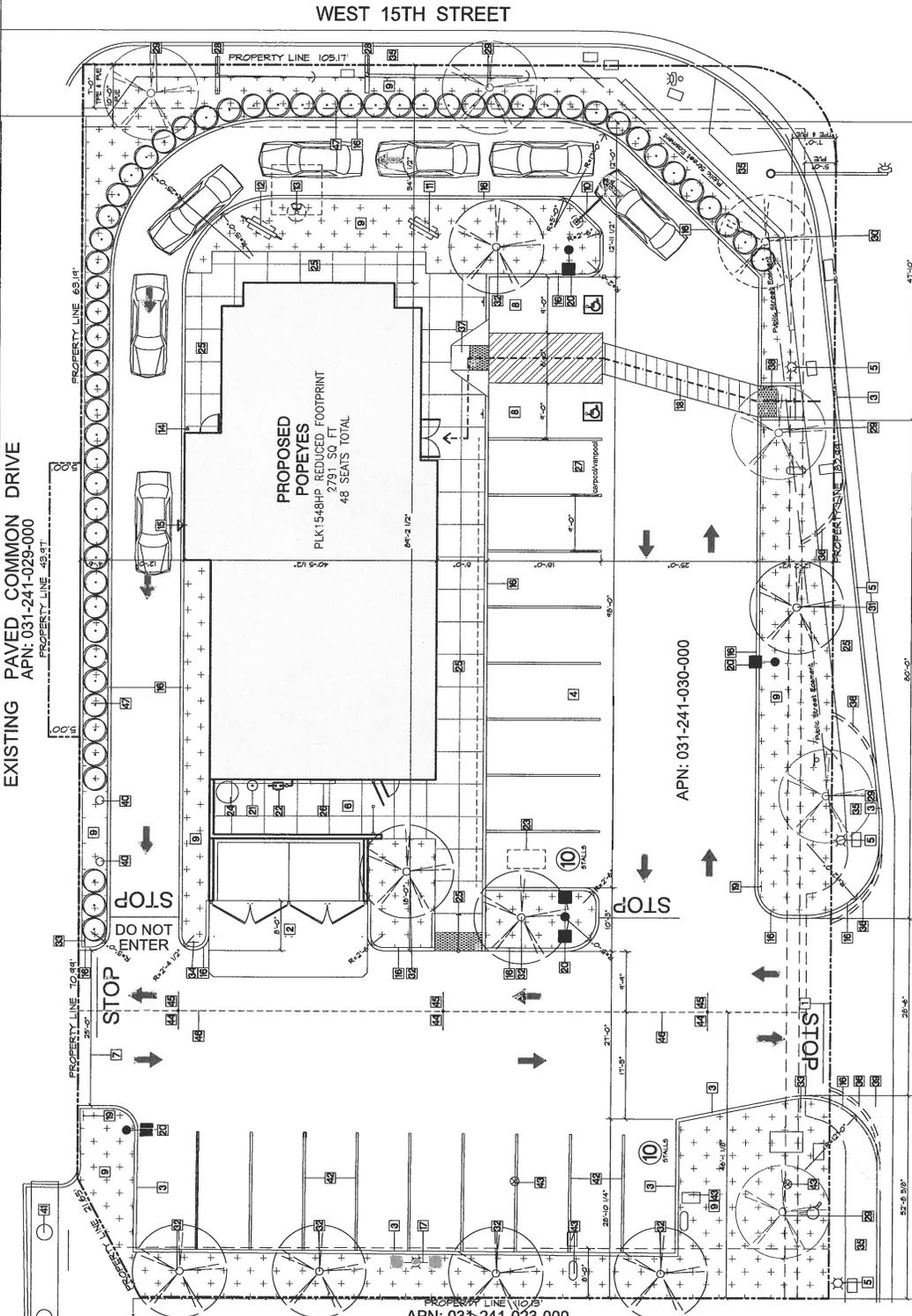
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No.	Description
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2	Track lin per City of Merced Parks
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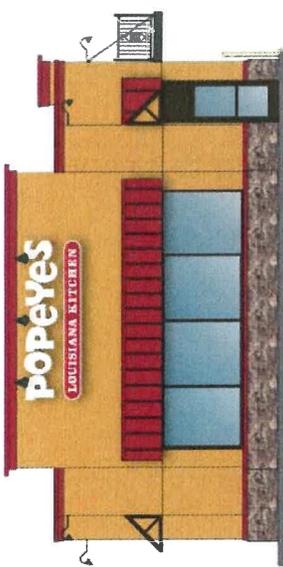
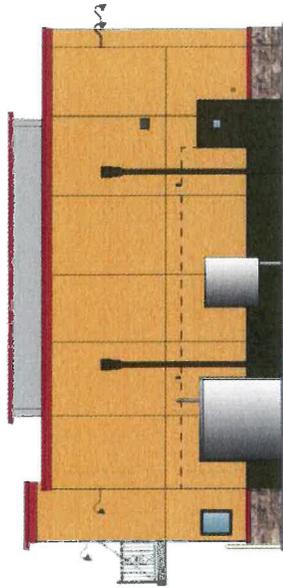
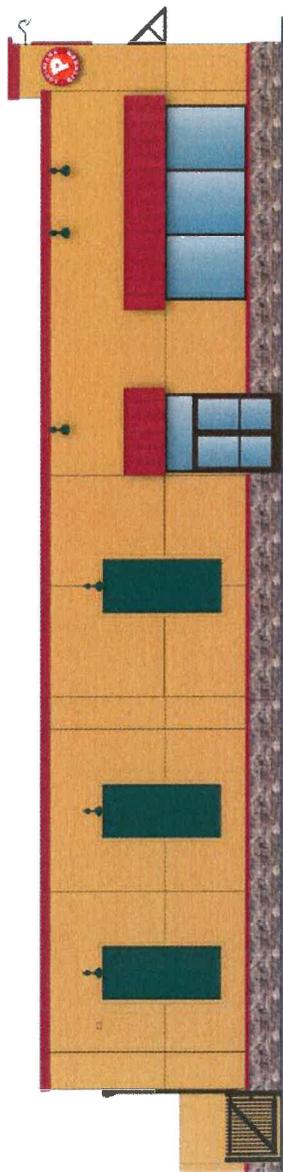
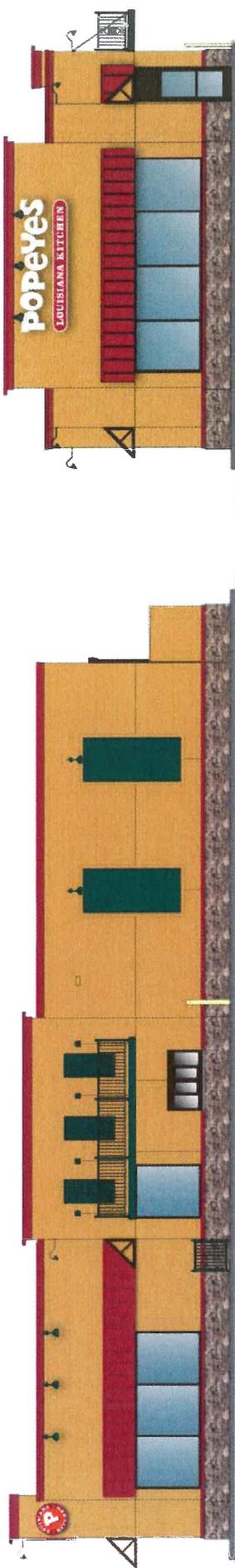
Site Plan Key Notes



Site Plan

Project Information	Construction Type: VB
Use: Restaurant with drive thru	Spreadsheet: No
Client: Greg Aquino, Capital System Inc. 1500 N. 1st St., Fresno, CA 93703	Required Parking: 20
Address: 1445 Martin Luther King Jr Way Merced, CA 95360	Permitted Title: 20 Zoning Chapter 20.58.7.60
APN: 031-241-023-000	Food and Beverage Commercials Establishments One (1) stall per each Two and One Half (2 1/2)
Number of Stories: 1	Some provided
Building Occupancy: A2	Number of seats provided: 48
Building Area: Total = 2,791 sq ft	Number of seats required: 20 (20 per 112.5 sq ft)
Zone: Thoroughfare Commercial (C-2)	Perches: Provided
	2 Accessible seats
	15 Standard seats
	Event Parking 20 (20)

ATTACHMENT B



ATTACHMENT C

-  Benjamin Moore 2158-30 : **Delightful Golden**
-  Benjamin Moore 2107-20 : **Mocha Brown**
-  Benjamin Moore 2040-10 : **Rainforest Foliage**
-  Benjamin Moore 2041-10 : **Hunter Green**

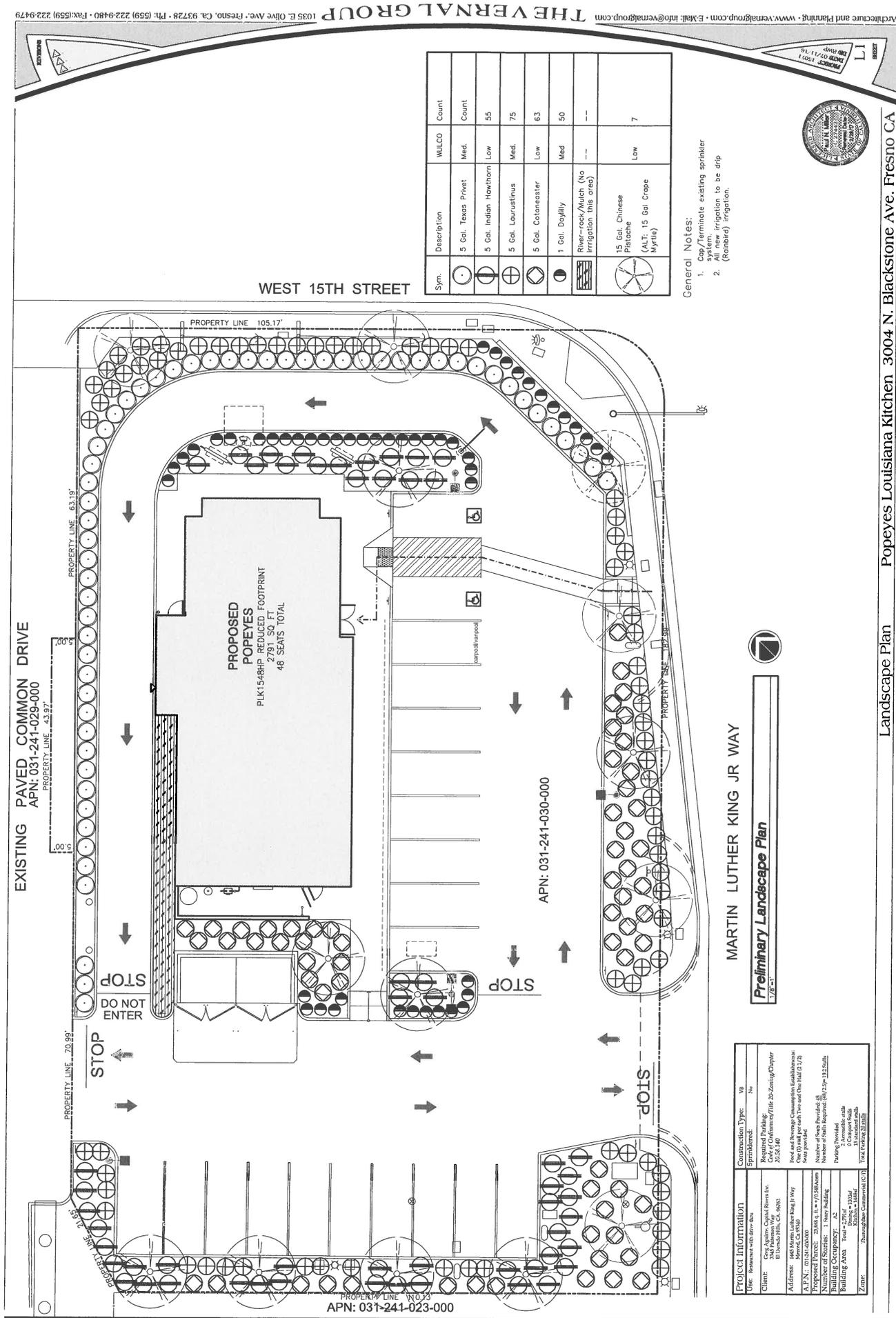
-  Benjamin Moore 2086-10 : **Exotic Red**
-  Benjamin Moore RM : **Bronzelone**
-  Coronado Stone - **Pro-Ledge : Four Rivers**

Popeyes Louisiana Kitchen
 1548 HP Prototype (Mirrored Version)
 Exterior Design Concept
05.19.2016



ATTACHMENT E

This sheet and its contents shall remain the property of The Vernal Group and no use shall be granted without express written consent.



Sym.	Description	WULCO	Count
○	5 Gal. Texas Privet	Med.	Count
⊙	5 Gal. Indian Hawthorn	Low	55
⊕	5 Gal. Laurustinus	Med.	75
⊗	5 Gal. Cotoneaster	Low	63
●	1 Gal. Dogwood	Med	50
▨	Rubber-sock/Whitch (No irrigation this area)	--	--
⊗	15 Gal. Chinese Pistache (ALT. 15 Gal. Grape Myrtle)	Low	7

- General Notes:
- Cap/Terminate existing sprinkler system.
 - All new irrigation to be drip (Rambler) irrigation.

MARTIN LUTHER KING JR WAY

Preliminary Landscape Plan

Project Information	Construction Type: VB
Use: Restaurant with drive-in	Sprinklered: No
Client: Gray Hunter Capital Services Inc. 1845 Madison Way Beverly Hills, CA, 90210	Required Parking: Code of Ordinances/Title 20-Zoning Chapter 22.01.06
Address: 3004 N. Blackstone Ave. Fresno, CA 93701	Fee and Beverage Consumption (as applicable) with 10% Fee and 10% Fee (1.1%) Seat provided
A.P.N.: 031-241-030-000	Number of Seats Provided: 48
Proposed Parcel: 23,066 sq. ft. = 7/10 Acres	Number of Seats Required: (4) (1.3) = 23 Seats
Number of Stories: 1 Story Building	Parking Provided: 1 Compact/Galley 1 Compact/Galley
Building Occupancy: AC	Total Parking: 20 Seats
Building Area: 10,000 sq. ft.	Zone: Through-Street Commercial (C-2)

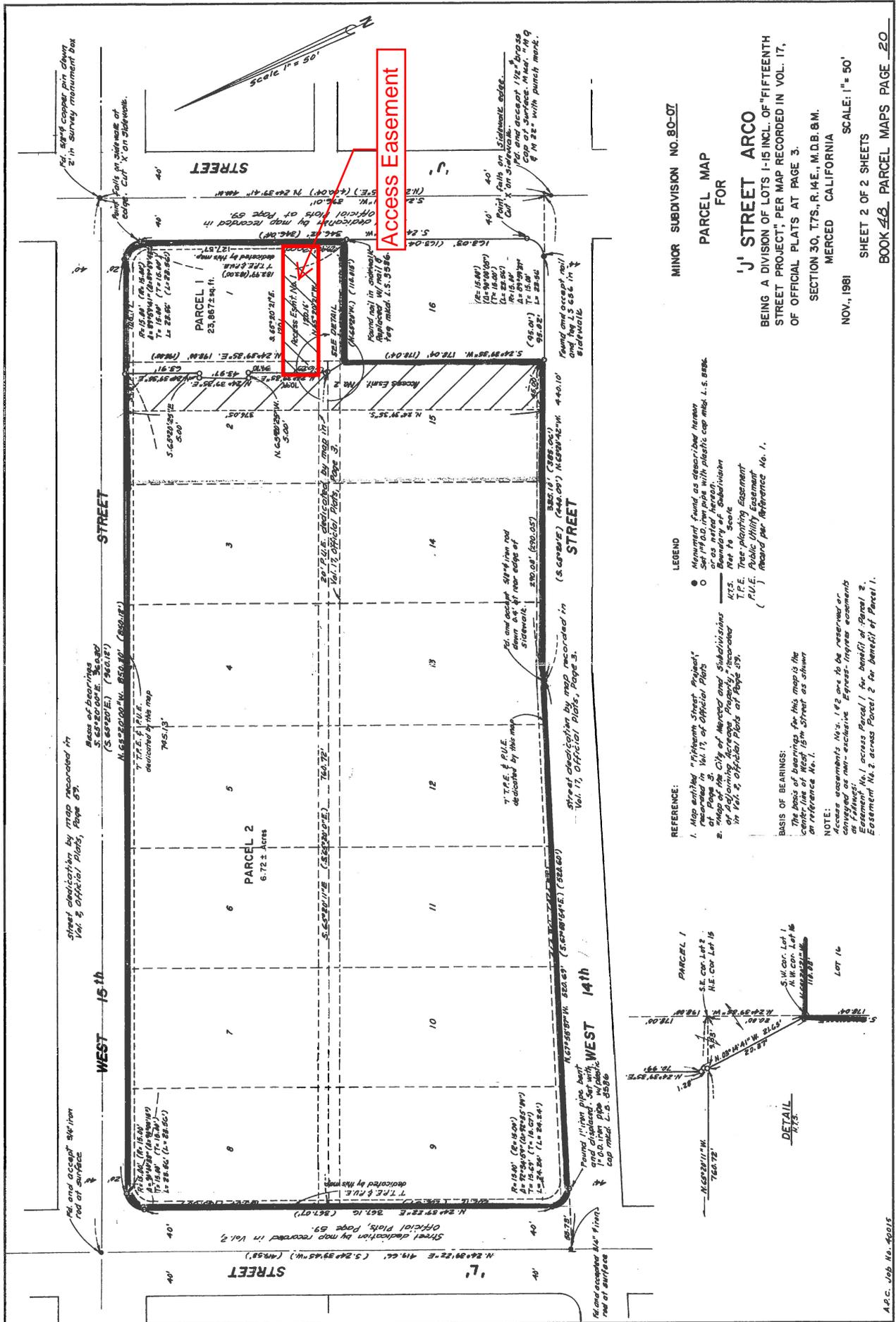


Popeyes Louisiana Kitchen 3004 N. Blackstone Ave. Fresno CA

EXISTING PAVED COMMON DRIVE
APN: 031-241-029-000

WEST 15TH STREET

APN: 031-241-023-000



Access Easement

MINOR SUBDIVISION NO. 80-07

PARCEL MAP
FOR

'J' STREET ARCO

BEING A DIVISION OF LOTS 1-15 INCL. OF "FIFTEENTH STREET PROJECT"; PER MAP RECORDED IN VOL. 17, OF OFFICIAL PLATS AT PAGE 3.

SECTION 30, T7S., R. 4E., M.D.B. 8 M.
MERCED CALIFORNIA

NOV., 1981

SHEET 2 OF 2 SHEETS

BOOK 48, PARCEL MAPS, PAGE 20

LEGEND

- Monument found as described herein
- Set 1/2" O.D. iron pipe with plastic cap mkd. L.S. 8586 or as noted herein.
- 1/2" T.P.E. easement
- 1/2" T.P.E. easement
- () Record per Reference No. 1.

REFERENCE:

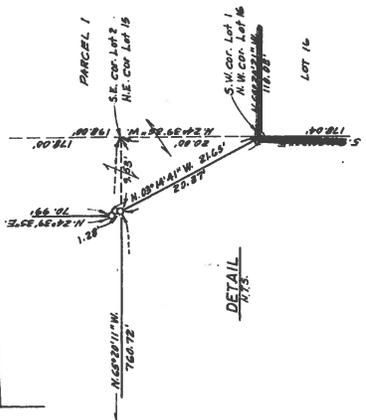
1. Map entitled "Fifteenth Street Project" recorded in Vol. 17, of Official Plats at Page 3.
2. Map of City of Merced and Subdivisions of adjoining Acreage Property, recorded in Vol. 2, Official Plats at Page 87.

BASIS OF BEARINGS:

The basis of bearings for this map is the center line of West 15th Street as shown on reference No. 1.

NOTE:

Access easements Nos. 1 & 2 are to be reserved or conveyed non-exclusive Egress-Ingress easements. Easement No. 1 across Parcel 1 for benefit of Parcel 2. Easement No. 2 across Parcel 2 for benefit of Parcel 1.



Refer to Page 2 for Sign Easement.

Recording Requested By and When Recorded Mail To:

J Street Plaza Co.
c/o Albert B. Glickman & Associates
9864 Wilshire Boulevard
Beverly Hills, California 90210
Attention: General Counsel

41922

RECORDED BY

TRANSCOUNTY TITLE

NOV 19 1998 AT 8:00am

VOL 3798 PAGE 704

OFF'L RECORDS OF

MERCEDE COUNTY CALIFORNIA

JAMES L. BALL

Recorder

12/9/98
28pd

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

THIS INSTRUMENT FILED FOR RECORD BY
TRANSCOUNTY TITLE
AS AN ACCOMMODATION ONLY. IT HAS
NOT BEEN EXAMINED AS TO ITS EXECUTION
OR AS TO ITS EFFECT UPON THE TITLE

PYLON SIGNS EASEMENT DECLARATION

1. Identification.

This Pylon Sign Easement Declaration ("Declaration") made as of this 17th day of November, 1998 is executed by J STREET PLAZA CO., a California general partnership ("JSPC").

2. Recitals.

2.1 JSPC is the owner of certain real property (the "Center") legally described as:

Parcel ("Parcel 1") and Parcel 2 ("Parcel 2") as shown on the Parcel Map (the "Parcel Map") for "J" Street Arco recorded in book 48 of Parcel Maps, pages 19 and 20, and being a division of Lots 1 through 15 inclusive of "FIFTEENTH STREET PROJECT" per map recorded in volume 17 of Official Plats at page 3, Official Records, Merced County.

2.2 JSPC intends to provide that the owner of Parcel 1 of the Center (and its successors in-interest) shall have the right to use the pylon sign located on Parcel 2 and intends to extinguish certain easements shown on Parcel Map. The owner of Parcel 1 and the owner of Parcel 2 are respectively referred to herein individually as an "owner" or collectively as the "owners".

3. Pylon Sign Easement

3.1 Easement. A pylon sign (the "Pylon Sign") is located on Parcel 2 at the location shown on Exhibit A attached hereto. The owner of Parcel 1 and those to whom it grants the rights and any time and from time to time (the "Parcel 1 User") shall have the right, at its election, to use a portion (to be described below) of each side of the Pylon Sign to install and maintain sign panels advertising the business(es) conducted on Parcel 1 and such non-exclusive rights as are appropriate or necessary for the purpose of constructing, repairing, operating and maintaining its sign panels on each side of such Pylon Sign. If no other occupants of Parcel 2 are identifying their businesses on the Pylon Sign, the Parcel 1 User shall have the right to use up to 100% of the Pylon Sign. If the occupant(s) of Parcel 2 are identifying their businesses on the Pylon Sign, the Parcel 1 User shall have the right to use not less than the lower 25% of the sign face of each side of the Pylon Sign.

3.2 Costs and Expenses. The owner of Parcel 2 shall repair, operate and maintain the Pylon Sign on Parcel 2. The Parcel 1 User shall reimburse Parcel 2 owner for (a) all out of pocket costs and expenses incurred in connection with the repair, operation and maintenance (but not replacement or capital repairs) of the Parcel Sign (the "Sign Costs") times (b) a percentage which is equal to the square foot area of the Parcel 1 Users sign panels on the Pylon Sign divided by the total square footage of all sign panels on the Pylon Sign. The Parcel 1 User shall not be responsible for any of the Sign Costs which are applicable to periods of time prior to or after the dates upon which the Parcel 1 User actually uses the Pylon Sign. The Parcel 2 owner shall bill the Parcel 1 User periodically, but not less often than semi-annually and not more often than monthly, for the Sign Costs each such bill shall contain reasonable support for such costs. The Parcel 1 User shall reimburse the Parcel 2 owner within 30 days of receipt of such bill.

3.3 Parcel 2 Owner's Rights. Nothing contained in this Declaration shall preclude the owner of Parcel 2 from removing or relocating the Pylon Sign, or constructing additional pylon signs on Parcel 2; provided however, that the Parcel 1 User shall have the same rights and easements with respect to such additional or relocated on pylon signs as are set forth herein with respect to Pylon Sign.

4. Failure to Perform.

4.1 Notice of Default. If an owner fails to perform its obligations under this Declaration (the "defaulting owner"), the owner of the other Parcel (the "performing owner") may send notice to the defaulting owner setting forth the obligation which the defaulting owner has failed to perform. If such obligation is not performed within thirty (30) days after receipt of such notice (unless the defaulting owner shall have commenced to perform the same within such period and shall be diligently proceeding to perform the

same), then the performing owner, shall have the right to perform the same.

4.2 Reimbursement. If a performing owner performs any of the obligations of a defaulting owner, the performing owner shall, in addition to any other remedies it may have, be reimbursed by the defaulting owner within thirty (30) days of presentation of a statement therefor. If the defaulting owner fails to reimburse the performing owner within such thirty (30) days period, the performing owner shall be entitled to record a lien against the defaulting owner's Parcel and improvements of the defaulting owner for the unpaid amounts, together with interest thereon from the date the performing owner expended such amounts at the rate of 15% per annum or the highest rate permitted by law, whichever is lower. Such lien shall be subordinate to the interest of any mortgagee, lessee or sublessee of the affected Parcel, irrespective of when their interest attached, and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

4.3 Other Remedies. In addition to the foregoing, if any owner defaults in the performance of any other provision of this Declaration, which default continues for a period of thirty (30) days following receipt of written notice specifying the particulars of such default, any other owner may institute legal action against the defaulting owner for specific performance, declaratory relief, damages or other suitable legal or equitable remedy. The remedies and liens provided in this Section and the enforcement thereof as herein provided shall be in addition to and not in substitution for or exclusion of any other rights and remedies which the parties may have at law or in equity.

5. Liens.

The lien provided for in Section 4 shall only be effective when filed for record as a claim of lien in the Office of the County Recorder of Merced County, signed and verified, which claim of lien shall contain the following as well as any other information required by law in order to make the lien effective:

- (i) A statement of the unpaid amount of costs and expenses;
- (ii) A description sufficient for identification of the Parcel of the defaulting owner which is the subject of the lien;
- (iii) The last known name and address of the owner or reputed owner of the Parcel which is the subject of the alleged lien; and
- (iv) The name and address of the lien claimant.

A performing owner's right to record a lien as provided herein shall not be impaired by an intervening sale or other disposition of the affected Parcel by the

defaulting owner. Such lien shall be subordinate to the interest of any mortgagee or lessee of the defaulting owner's Parcel, irrespective of when interest attached. The lien shall be for the use and benefit of the performing owner, and may be enforced by any remedies afforded lien claimants under applicable law or otherwise, including, without limitation, causing a notice of default, to be recorded against the defaulting owner's Parcel and thereafter causing the Parcel to be sold in the manner provided by applicable law. The performing owner shall have the power to bid on the Parcel of the defaulting owner at such foreclosure sale and thereafter to hold, lease, mortgage and convey the same. Upon payment in full (prior to such a foreclosure) of the delinquent assessment or unpaid taxes together with all applicable interest due thereon and attorney's fees relating thereto, the performing owner shall promptly cause to be recorded a further notice stating the satisfaction and release of the lien against the defaulting owner's Parcel.

6. Attorneys' Fees.

The prevailing party in any action to enforce any provision of this Declaration shall be entitled to receive from the other party its costs and expenses incurred in connection with such action, including reasonable attorneys' fees and costs for services rendered to the prevailing party in any such action (including any appeal thereof).

7. Termination of Access Easement.

All rights, obligations, easements, and rights of the parties under the Access Easement No. 1, shown on and created under the Parcel Map over Parcel 1 for the benefit of Parcel 2, are hereby terminated and rescinded. If a government authority having jurisdiction over this matter requires the reinstatement of Access Easement No. 1 or the creation of a similar easement in the future, then the owner of Parcel 1 shall have the right to locate, or relocate, at any time or from time-to-time, such access easement to a location it desires on Parcel 1 and shall have the right to configure and size such access easement in the manner it determines, subject only to the authority of such government entity to regulate the size, configuration and location of such access easement.

8. Obligations of this Declaration.

Each and every covenant, undertaking, condition, easement, right, privilege, and restriction (herein referred to as "Obligations of this Declaration") made, granted or assumed, as the case may be, by any party to this Declaration shall be an equitable servitude Parcel owned by such party. Every Obligation of this Declaration (a) is a burden on each Parcel and is for the benefit of each other Parcel, (b) runs with each Parcel and (c) shall be binding on each successive owner during its ownership of such Parcel, or portion thereof, or manner through an owner of such Parcel, or any portion thereof, and shall

benefit each other owner and its Parcel. Any transferee of any part of each respective Parcel shall automatically be deemed, by acceptance of title to such Parcel to have assumed all the Obligations of this Declaration relating thereto, but only to the extent such Obligations of this Declaration accrue after the effective date of such transfer of title. Any transferor shall upon the consummation of such transfer be relieved of all further liability under this Declaration except such liability as may have arisen during its period of ownership of the portion of the respective Parcel so conveyed and which remains unsatisfied, unless such transferor remains an owner hereunder.

9. No Waiver.

No delay or omission of any owner in the exercise of any right accruing upon any default of any other owner shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any owner of a breach or default of any of the terms and conditions of this Declaration by any other owner shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Declaration. Except as otherwise specifically provided in this Declaration, no remedy provided in this Declaration shall be exclusive, but each shall be cumulative with all other remedies provided in this Declaration, and at law or in equity.

10. Term.

The term of this Declaration shall expire on November 30, 2060, unless terminated sooner by matter of law, except that the provisions of Article 7 shall continue in perpetuity.

11. Miscellaneous Provisions.

11.1 Consent of Parties. Whenever consent or approval of either owner is required by this Declaration or by circumstances existing at the time, that owner shall not unreasonably withhold such consent or approval.

11.2 Exhibits. All exhibits referred to are attached hereto and incorporated herein by this reference.

11.3 Governing Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of California.

11.4 Severability. The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, invalid, or illegal.

11.5 Waiver. No consent or waiver, express or implied by either owner of any

breach or default by the other in the performance of any obligation hereunder shall be deemed or construed to be a consent to, or waiver of, any other breach or default by such owner hereunder. Failure on the part of any owner hereto to complain of any act or failure to act to the other owner or to declare the other owner in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such owner hereunder.

11.6 Execution of Documents. Each owner shall agree to execute and deliver such further instruments, agreements, contracts and documents, as may be reasonably required to effectuate the stated and intended purposes of this Declaration.

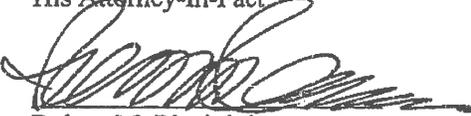
IN WITNESS WHEREOF, JSPC has executed this Declaration as of the dated first written above.

"JSPC"

J STREET PLAZA CO.,
a California general partnership

By: Albert B. Glickman

By: 
Richard N. Ellis
His Attorney-In-Fact

By: 
Robert M. Piccinini

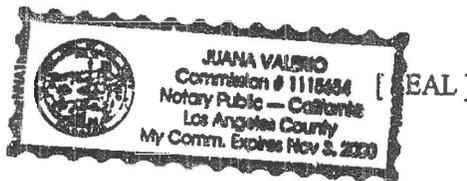
MERCED COUNTY

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On NOVEMBER 16TH, 1998, before me JUANA VALERIO,
personally appeared RICHARD N. ELLIS, personally known to me (or
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.

WITNESS my hand and official seal.

Juana Valerio
Signature

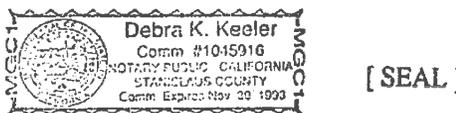


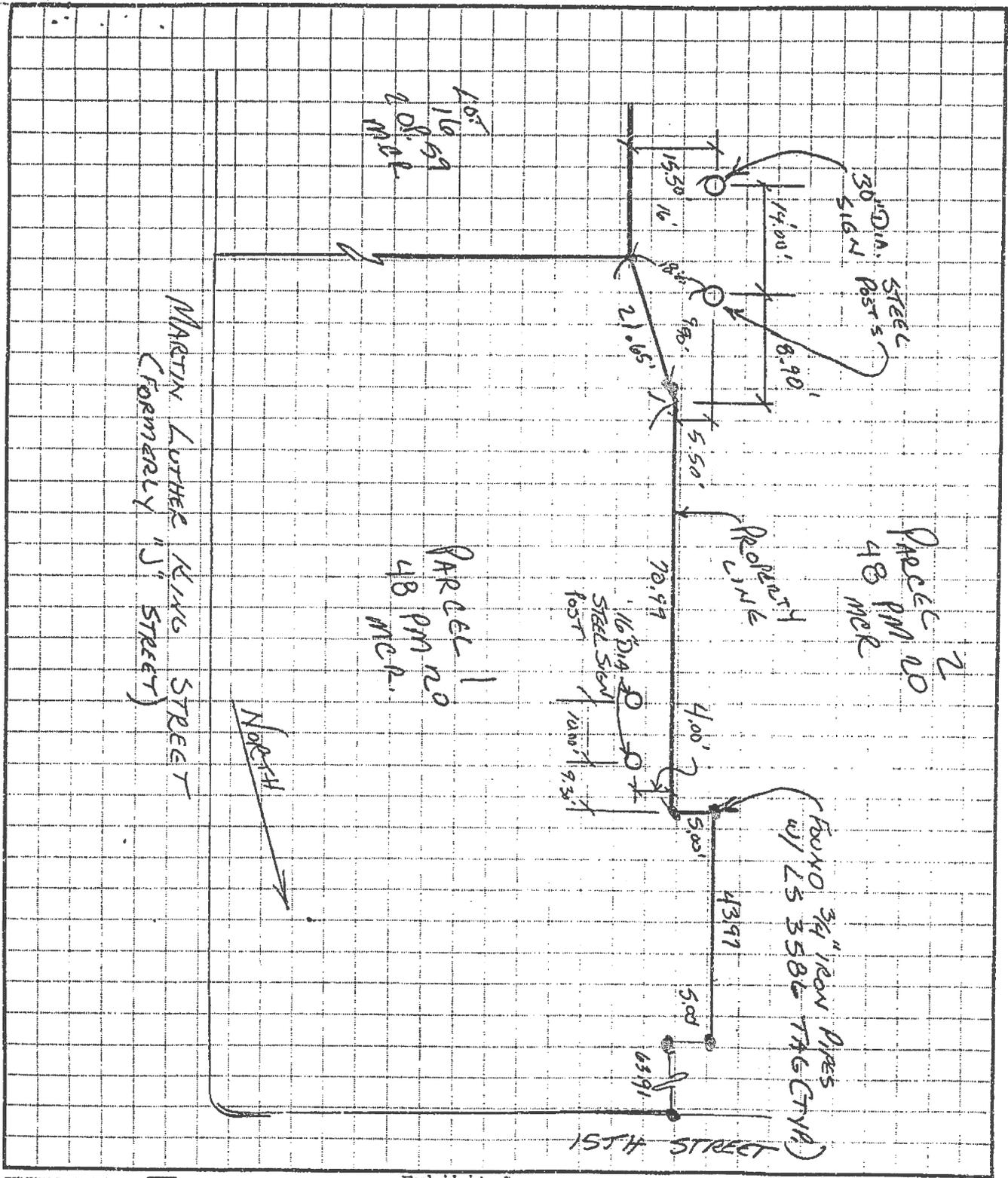
STATE OF CALIFORNIA)
) ss.
COUNTY OF Stanislaus)

On November 18, 1998, before me Debra K. Keeler,
personally appeared Robert M. Piccinini, personally known to me (or
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.

WITNESS my hand and official seal.

Debra K Keeler
Signature





PRODUCT 204-1 (Single Sheet) 205-1 (Pocket) Inc., Salem, Mass. 01971. To Order 1/8" ONE TOLL FREE 1-800-225-4380 Exhibit A

NOTICE OF EXEMPTION

To: _____ Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

From: (Public Agency)
City of Merced
678 West 18th St.
Merced, CA 95340

X County Clerk
County of Merced
2222 M Street
Merced, CA 95340

Project Title: Design Review #16-01 (Environmental Review #16-24)

Project Applicant: Capital Rivers Commercial and the Vernal Group, on behalf of "J" Street Plaza Company, a California general partnership, property owner

Project Location (Specific): 1445 Martin Luther King, Jr. Way APN: 031-241-030

Project Location - City: Merced **Project Location - County:** Merced

Description of Nature, Purpose, and Beneficiaries of Project:

The project involves demolition of an existing single-story building and the construction of a 2,791-square-foot building on an existing parcel served by all city services.

Name of Public Agency Approving Project: City of Merced

Name of Person or Agency Carrying Out Project: Greg Aguirre for Capital Rivers Commercial

Exempt Status: (check one)

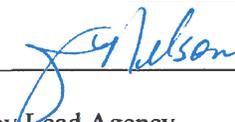
- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. Section Number: Section 153032 (in-fill Development Projects)
- Statutory Exemptions. State Code Number: _____.
- General Rule (Sec. 15061 (b)(3))

Reasons why Project is Exempt: Project is considered an in-fill development project. The project location is within the City limits on an approximately 1/2-acre parcel surrounded by urban uses. The site can be served by all required utilities and public services, and the project site has no value as habitat for endangered, rare or threatened species. No significant effects resulting from traffic, noise, air quality, or water quality will result from the subdivision of the lots. The project is consistent with the City of Merced General Plan and Zoning regulations.

Lead Agency: City of Merced

Contact Person: Julie Nelson, Planner

Area Code/Telephone: (209) 385-6858

Signature:  **Date:** 8-15-16 **Title:** Associate Planner

Signed by Lead Agency **Date Received for Filing at OPR:** _____
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

CITY OF MERCED
Planning Commission

Resolution #3073

WHEREAS, the Merced City Planning Commission at its regular meeting of September 7, 2016, held a public hearing and considered **Design Review #16-01**, initiated by Capital Rivers Commercial and the Vernal Group, on behalf of “J” Street Plaza Company, a California general partnership, property owner. This application involves a request to demolish the existing building and construct a new 2,791-square-foot fast-food restaurant with a drive-thru at the southwest corner of Martin Luther King, Jr. Way and 15th Street (1445 Martin Luther King, Jr. Way) within a Thoroughfare Commercial (C-T) Zone; also known as Assessor’s Parcel No. 031-241-030; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through J of Staff Report #16-20; and,

NOW THEREFORE, after reviewing the City’s Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #16-24, and approve Design Review #16-01, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner _____, seconded by Commissioner _____, and carried by the following vote:

AYES: Commissioner(s)

NOES: Commissioner(s)

ABSENT: Commissioner(s)

ABSTAIN: Commissioner(s)

ATTACHMENT I

PLANNING COMMISSION RESOLUTION #3073

Page 2

September 7, 2016

Adopted this 7th day of September 2016

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions:DR#16-01 1445 MLK Jr. Way (Popeye's)

Conditions of Approval
Planning Commission Resolution #3073
Design Review #16-01

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Exhibits 2 and 3 (elevations), and Exhibit 4 (landscape plan) -- Attachments B, C, D, and E, except as modified by the conditions.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
4. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
5. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws,

regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

6. All parking lot and building lighting shall be shielded or oriented in a way that does not allow “spill-over” onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent parcels.
7. The applicant shall work with the City’s Refuse Department to determine the proper location for a trash enclosure and if a recycling container will be required to comply with AB 341. The container(s) shall be enclosed within a refuse enclosure built to City Standards.
8. Bicycle racks (inverted-U-style) shall be provided at a minimum ratio equal to 5% of the vehicular parking spaces.
9. As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards, installing street trees, and other relevant City of Merced/State/Federal standards and regulations.
10. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
11. The project shall comply with the requirements of the California Urban Level of Flood (200-year Flood) and all FEMA flood zone requirements, where applicable.
12. All necessary permits shall be obtained from Caltrans for any work done within the Caltrans right-of-way.
13. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
14. The project shall comply with all the Post Construction Standards required to comply with state requirements for the City’s Phase II MS-4 Permit (Municipal Separate Storm Sewer System).

15. All landscaping in the public right-of-way and on-site shall comply with State Water Resources Control Board Resolution No. 2015-0032 “To Adopt an Emergency Regulation for Statewide Urban Water Conservation” and the City’s Water Conservation Ordinance (Merced Municipal Code Section 15.42). Xeriscape or artificial turf shall be used in place of natural sod or other living ground cover. If turf is proposed to be installed in park-strips or on-site, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed. All irrigation provided to street trees, parking lot trees, or other landscaping shall be provided with a drip irrigation or micro-spray system.
16. All landscaping shall be installed prior to occupancy and shall thereafter be maintained in a healthy and aesthetic manner. Parking lot trees are required at a minimum rate of one tree per each six parking spaces. The type of shade trees used for parking lot trees shall be selected from the City’s approved tree list and meet the City’s minimum requirements of casting shade in the parking lot. Landscaping shall be installed as shown on Exhibit 4 (Attachment E of Staff Report #16-20), except as modified by these conditions.
17. All signing shall comply with the City’s Sign Ordinance. Signing on the building shall be calculated based on the tenant’s primary and secondary building frontage. One-square-foot of signing for each lineal foot of primary frontage and ½ square-foot of signing for each lineal foot of secondary frontage is allowed. The maximum sign area for the site shall not exceed 500 square feet. A freeway sign in compliance with Merced Municipal Code Section 17.36.810 is allowed. Any signs installed on the existing pylon sign on the adjacent property shall be in compliance with the agreement entitled “Pylon Signs Easement Declaration,” recorded as Document #41922 on November 19, 1998 (refer to Attachment G of Staff Report #16-20) and the City’s sign ordinance.
18. All mechanical equipment shall be screened from public view.
19. The premises shall remain clean and free of debris and graffiti at all times.
20. Outdoor seating is not shown on the site plan and is not approved with this application. Prior to any outdoor seating being installed, approval must be obtained by the Planning Department. Additional parking

spaces may be required if the total number of seats for the restaurant exceeds 48.

21. If it is determined that the access easement running east and west from Martin Luther King, Jr. Way to the western property line is still valid, plans submitted for building permit review shall show the easement area. If the easement is still valid, all improvements shall be located outside the easement area. In addition, plans shall show the right-of-way dedication at the corner of Martin Luther King, Jr. Way and 15th Street dedicated by the deed recorded as Document #2006-057480 in Merced County Records.
22. A temporary banner permit shall be obtained prior to installing any temporary signs. Free-standing temporary signs (i.e., sandwich boards, A-frame signs, etc.) are prohibited.
23. Any music played over the outdoor speakers mounted to the building walls shall be kept to a minimum noise level so as not to travel outside the immediate area around the building.

n:shared:planning:PC Resolutions: DR #16-01 Exhibit A