



# CITY OF MENDOTA

*"Cantaloupe Center Of The World"*

JUAN LUNA  
Chairperson  
ALBERT ESCOBEDO  
Vice-Chairperson  
JOSE GUTIERREZ  
JONATHAN LEIVA  
KEVIN ROMERO

## CITY OF MENDOTA PLANNING COMMISSION AGENDA

City Council Chambers  
Mendota, CA 93640  
REGULAR MEETING  
December 15, 2020  
6:30 P.M.

CRISTIAN GONZALEZ  
City Manager  
Public Works/Planning Director  
JEFFREY O'NEAL  
City Planner

The Mendota City Planning Commission welcomes you to its meetings, which are scheduled for the 3rd Tuesday every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Planning Commissioners may discuss and/or take action on any or all of the items listed on this agenda. **Please turn your cell phone off. Thank you for your respect and consideration.**

Any public writings distributed by the City of Mendota to at least a majority of the Planning Commission regarding any item on this regular meeting agenda will be made available at the front counter at City Hall located at 643 Quince Street Mendota, CA 93640, during normal business hours.

In compliance with the Americans with Disabilities Act, those requiring special assistance to participate at this meeting please contact the City Clerk at (559) 655-3291. Notification of at least forty-eight hours prior to the meeting will enable staff to make reasonable arrangements to ensure accessibility to the meeting.

**If you would like to participate at this meeting via Zoom, please use the following information:**

Dial-in number: 1(669) 900-6833 Meeting ID: 963 3439 4752 Password: 081625  
<https://zoom.us/j/96334394752?pwd=NWRGeVViSVNnVFILaUtzNytXemhodz09>

### **CALL TO ORDER**

### **ROLL CALL**

### **FLAG SALUTE**

### **FINALIZE THE AGENDA**

1. Adjustments to Agenda
2. Adoption of final Agenda

### **MINUTES AND NOTICE OF WAIVING OF READING**

1. Approval of the minutes of the regular Planning Commission meeting of November 17, 2020.
2. Notice of waiving the reading of all resolutions introduced and/or adopted under this agenda.

## **PUBLIC HEARING**

1. Commission discussion and consideration of **Resolution No. PC 20-03**, approving modifications to the conditional use permit approved as part of Application No. 17-43, and **Resolution No. PC 20-04**, recommending that the City Council approve amendments to the Development Agreement enacted pursuant to Ordinance No. 18-02.
  - a. *Receive report from City Planner O'Neal*
  - b. *Inquiries from Planning Commissioners to staff*
  - c. *Chairperson Luna opens the public hearing*
  - d. *Once all comment has been received, Chairperson Luna closes the public hearing*
  - e. *Commission considers Resolution No. PC 20-03 and 20-04 for adoption*
  
2. Commission discussion and consideration of making a determination pursuant to the California Environmental Quality Act, approving a conditional use permit, making a determination of General Plan consistency for the disposal of real property, and making a recommendation to the City Council regarding a general plan amendment, rezone, and development agreement in the matter of Application No. 20-23, the Valley Agricultural Holdings, LLC project.
  - a. *Receive report from City Planner O'Neal*
  - b. *Inquiries from Planning Commissioners to staff*
  - c. *Chairperson Luna opens floor to receive any comment from the public*
  - d. *Commission considers continuing the public hearing to a special meeting*

## **PUBLIC COMMENT ON ITEMS THAT ARE NOT ON THE AGENDA**

The public is invited to speak to the Planning Commission at this time about any item that is not on the Agenda. Please limit your comments to five (5) minutes. Please note that the Planning Commission cannot take action on any item not listed on the agenda.

## **PLANNING DIRECTOR UPDATE**

## **PLANNING COMMISSIONERS' REPORTS**

## **ADJOURNMENT**

### **CERTIFICATION OF POSTING**

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota Planning Commission Regular Meeting of Tuesday, December 15, 2020 was posted on the outside bulletin board of City Hall, 643 Quince Street on Friday, December 11, 2020 at 4:00 p.m.

  
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Celeste Cabrera-Garcia, City Clerk



## CITY OF MENDOTA PLANNING COMMISSION MINUTES

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**Regular Meeting**

**Tuesday, November 17, 2020**

**6:30 p.m.**

**Meeting called to order by Chairperson Luna at 6:30 PM.**

### **Roll Call**

**Commissioners Present:** Chairperson Juan Luna, Vice-Chairperson Albert Escobedo, Commissioners Jose Alonso (via Zoom), Jonathan Leiva (via Zoom), and Kevin Romero

**Commissioners Absent:** Commissioner Jose Gutierrez

**Staff Present:** Cristian Gonzalez, City Manager (via Zoom); Jeffrey O'Neal, City Planner, and Celeste Cabrera-Garcia, City Clerk

**Flag Salute led by Commissioner Romero**

### **FINALIZE THE AGENDA**

1. Adjustments to Agenda
2. Adoption of final Agenda

A motion was made by Commissioner Romero to adopt the agenda, seconded by Vice-Chairperson Escobedo; unanimously approved (5 ayes, absent: Gutierrez).

### **MINUTES AND NOTICE OF WAIVING OF READING**

1. Approval of the minutes of the regular Planning Commission meeting of September 15, 2020.
3. Notice of waiving the reading of all resolutions introduced and/or adopted under this agenda.

City Clerk Cabrera-Garcia stated that the minutes of the September 15, 2020 Planning Commission meeting incorrectly reflects the vote for Commissioner Leiva for Public

Hearing item 1, and requested that the Commission approve the minutes with a modification that vote be changed to four (4) ayes.

A motion to approve items 1 and 2 with the aforementioned modification was made by Commissioner Alonso, seconded Commissioner Romero; unanimously approved (5 Ayes, absent: Gutierrez).

### **PUBLIC HEARING**

1. Proposed adoption of **Resolution No. PC 20-02**, approving Application No. 20-14, consisting of Lot Line Adjustment No. 20-01 between APNs 013-130-03, 013-141-06S, and 013-141-07S.

Chairperson Luna introduced the item and City Planner O'Neal summarized the report.

Discussion was held on the item.

At 6:39 p.m. Chairperson Luna opened the hearing to the public and, hearing no one present willing to comment, closed it in that same minute.

A motion was made by Commissioner Romero to adopt Resolution No. PC 20-02, seconded by Vice-Chairperson Escobedo; unanimously approved (5 ayes, absent: Gutierrez).

### **PUBLIC COMMENT ON ITEMS THAT ARE NOT ON THE AGENDA**

None offered.

### **PLANNING DIRECTOR UPDATE**

None offered.

### **PLANNING COMMISSIONERS' REPORTS**

City Planner O'Neal provided an update on the Valley Agricultural Holdings project.

Discussion was held on the status of the Little Cesar's project and the carwash project.

### **ADJOURNMENT**

At the hour of 6:48 p.m. with no more business to be brought before the Planning Commission, a motion for adjournment was made by Commissioner Romero, seconded by Vice-Chairperson Escobedo; unanimously approved (5 ayes, absent: Gutierrez).

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Juan Luna, Chairperson

ATTEST:

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Celeste Cabrera-Garcia, City Clerk

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**AGENDA ITEM – STAFF REPORT**

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**TO:** HONORABLE CHAIRPERSON AND COMMISSIONERS  
**FROM:** JEFFREY O'NEAL, AICP, CITY PLANNER  
**SUBJECT:** APPLICATION NO. 20-24, THE LEFT MENDOTA 1 LLC COMMERCIAL CANNABIS PROJECT  
**DATE:** DECEMBER 15, 2020

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**ISSUE**

In the matter of Application No. 20-24, the Left Mendota 1 LLC Commercial Cannabis Project, shall the Planning Commission adopt Resolution No. PC 20-03 making a determination of exemption from the California Environmental Quality Act and approving modifications to the conditional use permit approved as part of Application No. 17-43 and adopt Resolution No. PC 20-04 recommending that the City Council approve amendments to the Development Agreement enacted pursuant to Ordinance No. 18-02?

**BACKGROUND**

In addition to the State of California's Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), Chapters 8.37 (Commercial Cannabis Businesses) and 17.99 (Commercial Cannabis Overlay District) provide the regulations applicable to non-personal cannabis activities in Mendota. Pursuant to these local regulations, an applicant wishing to undertake commercial cannabis activities must meet certain location criteria, receive approval of a conditional use permit, and enter into a development agreement with the City. On December 4, 2020 the Planning Department received an application for a modification to the existing commercial cannabis facility located at 1269 Marie Street.

<u>Owner:</u>	Marie Street Development, LLC
<u>Applicant:</u>	Left Mendota 1, LLC
<u>Representative:</u>	Chris Lefkovitz
<u>Location:</u>	1269 Marie Street, APNs 013-280-15 and 013-280-22S <sup>1</sup> See attached map and photo
<u>Site Size:</u>	Approximately 14.61 acres
<u>General Plan:</u>	Light Industrial
<u>Zoning:</u>	M-1/CO, Light Manufacturing with Commercial Cannabis Overlay District
<u>Existing Use:</u>	Commercial cannabis operation
<u>Surrounding Uses:</u>	North – Airport, vacant; P-F, M-1/CO East – Idle biomass plant; M-2/CO South – Tow yard, concrete plant, agriculture; M-1 West – Materials storage, vacant; M-1
<u>Street Access:</u>	Marie Street

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<sup>1</sup> APNs 013-162- 14S, 013-280-19, and 013-280-21S are under the same ownership but are not proposed for development with cannabis-related uses.

The project site currently supports an approximately-100,000-square-foot (SF) main building along with a number of outbuildings and covered areas and was historically used for cold storage and produce packing. On January 24, 2018, the Planning Commission adopted Resolution No. PC 18-01 (attached), which authorized the then-applicant to renovate and convert the existing structures and facilities for cannabis cultivation and processing uses consistent with the City's commercial cannabis ordinance. No changes to building footprints, landscaping, or hardscaped area were proposed or have subsequently occurred. Ingress and egress occur at several locations: a main drive approach with guard hut located approximately central to the Marie Street frontage, a second approach approximately 100 feet to the northwest that enters the main parking area, and two nearly-adjointing drive approaches on Marie Street at the northern end of the site. A fourth point of access could be provided via an existing (but closed) approach on APN 013-280-22S at the far south end of the project areas. In addition to paved access, circulation, and loading areas, the site currently supports approximately 144 delineated parking spaces. Two abandoned rail spurs extend from Marie Street easterly into the site. Portions of the site are enclosed with six-foot chain-link fence topped with barbed wire.

Via separate action, the City Council adopted Ordinance No. 18-02, which approved a development agreement consistent with the City's commercial cannabis ordinance.

### **ANALYSIS**

Application No. 20-24 proposes construct approximately two (2.0) acres of greenhouses for indoor cultivation of cannabis (site plan attached). The greenhouses will be constructed within an approximately-2.64-acre area in the southern portion of APN 013-280-15 and may result in the removal of several thousand square feet of existing buildings and covered areas, 10,000 SF of parking area, and the abandoned rail spurs. No other changes to the site or the previously-approved operation are proposed.

Although paved area currently considered to be part of the parking lot would be removed, no actual parking spaces would be lost; further, 144 parking spaces is an excessive number for the proposed use and if any were to be removed, the site would still be amply parked. Once the applicant has determined the exact location of the greenhouses, the site plan will be updated to accurately depict the proposed improvements and other site characteristics pursuant to City, State, and/or other regulatory agency requirements.

All conditions of approval detailed in Resolution No. PC 18-01 would remain in effect unless expressly or impliedly superseded.

The development agreement, the draft version of which is attached, is largely a contract document but also contains provisions for site development and use related to project entitlements, operations, and allowable license types, along with discussion of financial considerations. The term of the agreement is 30 years. During that time, the applicant will pay various public benefit fees to the City:

1. Non-Storefront Payment. An annual payment of \$85,000 for each non-storefront retailer operating on the site. The agreement account for up to nine (9) such retailers onsite.

2. Quarterly Payment. An annual payment of \$210,000 made in quarterly installments. This is intended to function as a minimum fee payable even if there is no activity on the site and may be modified by No. 3 below.
3. Square Foot Charge. \$8.00 per square foot of active cannabis activity. This fee would be paid instead of the quarterly fee if the applicant and/or its operators are actively engaged in cannabis operations.
4. Greenhouse Payment. \$0.50 per square foot of canopy space in any structure used for mixed-light cultivation.

The Square Foot Charge would be subject to a five (5) percent increase every ten years.

### ENVIRONMENTAL

The first step in complying with the California Environmental Quality Act (CEQA) is to determine whether the activity in question constitutes a “project” as defined by CEQA, Public Resources Code Section 21000, et seq. and the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Section 15000, et seq. A “project” consists of the whole of an action (i.e. not the individual pieces or components) that may have a direct or reasonably foreseeable indirect effect on the environment. The second step is to determine whether the project is subject to or exempt from the statute. This proposal qualifies as a project under CEQA because it involves the issuance to a person of a “lease, permit, license, certificate, or other entitlement for use” as described in CEQA Guidelines Section 15378.

After consideration, since the proposed activities constitute an incremental increase to activities already occurring on the site, staff supports a finding consistent with CEQA Guidelines Section 15061(b)(3). Under this “common sense” rule, if it can be shown with certainty that the project does not have the potential to have a significant effect on the environment, it is not subject to further environmental review.

### CONDITIONAL USE PERMIT FINDINGS

The provisions of Mendota Municipal Code Section 17.84.050 require that the following findings be made prior to approval, or in this case amendment, of a conditional use permit:

**FINDING No. 1: THE SITE FOR THE PROPOSED USE IS ADEQUATE IN SIZE AND SHAPE TO ACCOMMODATE SUCH USE AND ALL YARDS, SPACES, WALLS AND FENCES, PARKING, LOADING, LANDSCAPING AND OTHER FEATURES TO ADJUST SUCH USE WITH THE LAND AND USES IN THE NEIGHBORHOOD.**

Staff believes that the proposed use is compatible with the surrounding uses. Structures will not encroach into any required yard or setback. Onsite parking has been provided to adequately address the anticipated number of vehicles, as well as provide compliance with the Americans with Disabilities Act. The addition of trees and landscaped areas will further enhance the appearance of the site and provide additional aesthetic compatibility with adjacent uses.

**FINDING No. 2: THE SITE FOR THE PROPOSED USE RELATES TO STREETS AND HIGHWAYS ADEQUATE IN WIDTH AND PAVEMENT TYPE TO CARRY THE QUANTITY AND KIND OF TRAFFIC GENERATED BY THE PROPOSED USE.**



Marie Street is an industrial collector type street, as is Belmont to the east. Historically, there have been no complaints related to traffic, and the proposed use does not act to further intensify existing conditions during peak hours. The site's relationship to adjacent streets is adequate for the proposed use. Applicants fair share of development fees will go towards repair and improvements to the existing pavement.

**FINDING No. 3: THE PROPOSED USE WILL HAVE NO ADVERSE EFFECT ON ABUTTING PROPERTY OR THE PERMITTED USE THEREOF.**

The site has historically been used as an industrial site. The change is expected to be more intensive land use but will represent an overall positive impact to its relationship to surrounding land uses and represents an important redevelopment opportunity by renovating a blight area. The effect on both surrounding and adjacent land uses is seen as positive.

**FINDING No. 4: THE CONDITIONS STATED IN THE PROJECT APPROVAL ARE DEEMED NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE.**

The conditions of approval will serve to accommodate the proposed use while protecting the health, safety, and welfare of the public. Conditions of approval are based upon standards contained within the Mendota General Plan and the Mendota Municipal Code, and upon precedent established through review and approval of similar projects. Further, the proposed conditions will serve to implement the goals and objectives of the General Plan, which itself is intended to provide for logical and orderly development of the City in a manner beneficial to its residents.

**PUBLIC NOTICE**

Notice of the public hearing was published in the December 4 edition of *The Business Journal*, was individually mailed to property owners within 300 feet of the project site, and was posted at City Hall.

**FISCAL IMPACT**

Review and processing of the planned development permit, engineering plans, and building plans are paid for by the applicant, and the project is responsible for payment of development impact fees. As discussed, the project will be responsible for payment of various public benefit fees that can amount to hundreds of thousands of dollars or more annually. Building fees will be determined when a building permit is requested.

**RECOMMENDATION**

Staff recommends that the Planning Commission:

1. Adopts Resolution No. PC 20-03, making a determination of exemption from the California Environmental Quality Act and amending the conditional use permit contained in Application No. 17-43.

2. Adopts Resolution No. PC 20-04, forwarding a recommendation to the City Council to amend the Development Agreement approved pursuant to Ordinance No. 18-02.

**Attachment(s):**

1. Aerial photo
2. Assessor's Parcel Map
3. Resolution No. PC 18-01 as executed
4. Resolution No. PC 20-03, including site plan
5. Resolution No. PC 20-04, including development agreement



Application No. 20-24  
APNs 013-280-15 & 22S

Left Mendota 1, LLC  
1269 Marie Street

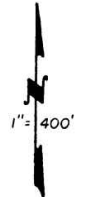
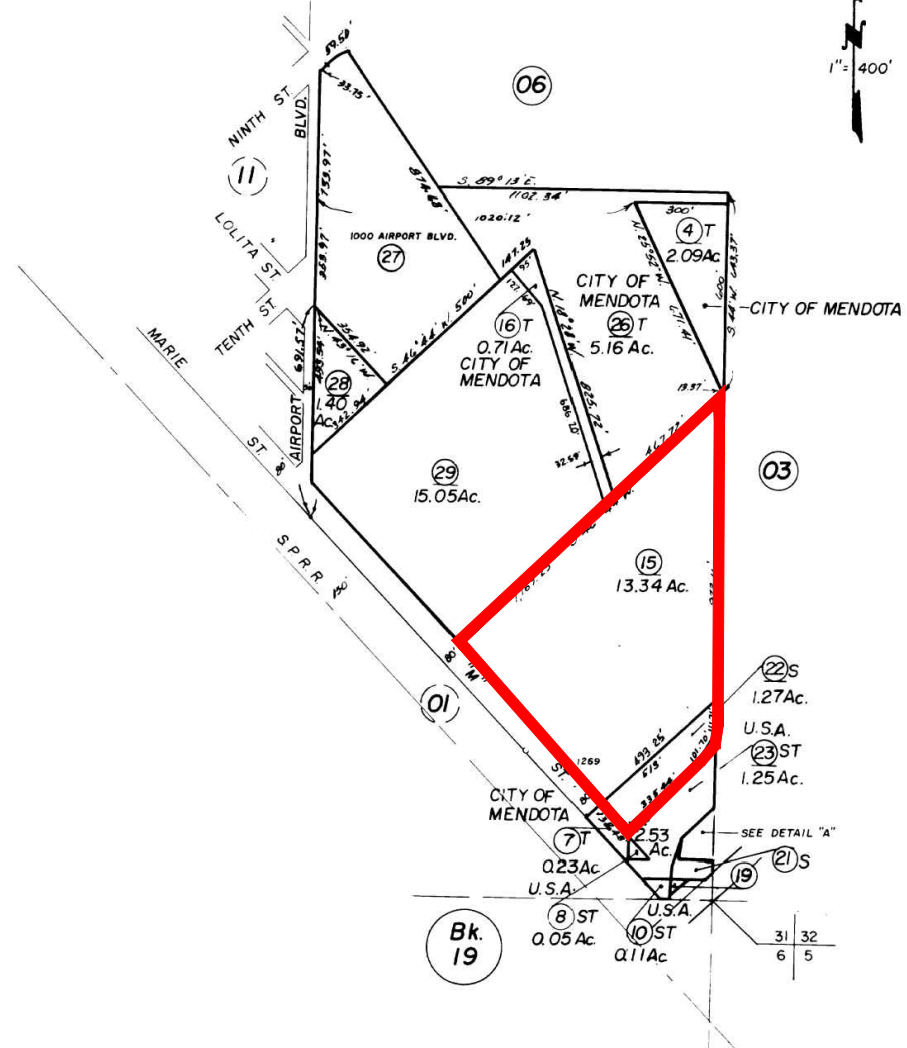
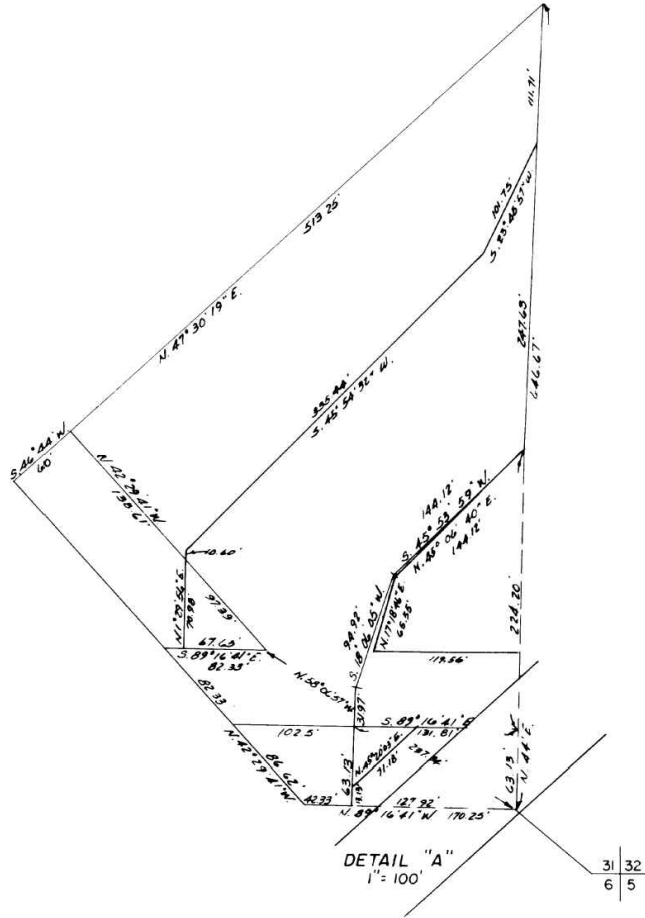
 Project

— NOTE —  
 This map is for Assessment purposes only.  
 It is not to be construed as portraying legal  
 ownership or divisions of land for purposes  
 of zoning or subdivision law.

POR. SEC. 31, T 13 S., R. 15 E. M.D.B. & M.

Tax Area  
 12-010  
 12-013

13-28



Assessor's Map Bk. 13 -Pg. 28  
 County of Fresno, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses.  
 Assessor's Parcel Numbers Shown in Circles.

 Project

Application No. 20-24  
 APNs 013-280-15 & 22S

Left Mendota 1, LLC  
 1269 Marie Street

1970

**PLANNING COMMISSION  
OF THE CITY OF MENDOTA  
FRESNO COUNTY, CALIFORNIA**

**RESOLUTION No. PC 18-01**

**A RESOLUTION OF THE CITY OF MENDOTA PLANNING COMMISSION APPROVING  
APPLICATION No. 17-43, A CONDITIONAL USE PERMIT TO AUTHORIZE RENOVATION OF AN EXISTING  
COLD STORAGE PACKING FACILITY INTO AN INDUSTRIAL CENTER FOR CANNABIS CULTIVATION AND  
PROCESSING LOCATED AT 1269 MARIE STREET (APN 013-280-15)**

**WHEREAS**, at a special meeting on January 24, 2018, the Mendota Planning Commission did conduct a public hearing to consider Application No. 17-43, submitted by Tim McGraw on behalf of CHH,LLC for a Conditional Use Permit; and

**WHEREAS**, the applicant proposes to renovate an existing 100,000 square foot cold storage and packing facility located at 1269 Marie Street, to create a industrial center for cannabis cultivation and processing, which is currently designated by the City of Mendota 2005-2025 General Plan Use Element as Public/Quasi Public Facility, and zoned M-1 Light Manufacturing in the City's Cannabis Overlay District; and

**WHEREAS**, on October the 31st, 2017, the Planning Department accepted an application for a conditional use permit filed by Tim McGraw on behalf of the CHH,LLC, for the renovation/construction of the proposed improvements; and

**WHEREAS**, the project was determined to be categorically exempt from the California Quality Act under CEQA Guidelines §15332; and

**WHEREAS**, a notice of public hearing was placed in the January 12, 2018, printing of the Fresno Bee newspaper and all surrounding property owners within a 300-foot radius of the project site were notified by United States Postal Service delivery, and a copy of the notice of public hearing was posted on the Mendota City Hall bulletin window; and

**WHEREAS**, the Mendota Planning Commission made the following findings pursuant to §17.08.050 of the Mendota Municipal Code and pursuant to ordinance 17-13; and

1. That the site for the proposed use is adequate in size and shape to accommodate such use and all yards, spaces, walls and fences, parking, loading, landscaping, and other features required by this chapter to adjust such use with the land and uses in the neighborhood;
2. That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
3. That the proposed use will have no adverse effect on abutting property or the permitted use thereof; and
4. That the conditions stated in the resolution are deemed necessary to protect the public health, safety, and general welfare.

**NOW, THEREFORE BE IT RESOLVED** that the Mendota Planning Commission does hereby approve Application No. 17-43, subject to the following conditions of approval:

1. The conditional use permit detailed within Application No. 17-43 shall expire one (1) year following the date of its approval unless, prior to expiration, a building permit for the requested site modifications is issued by the City of Mendota and construction is commenced and being diligently pursued. At the discretion of the Planning Commission, and upon valid request prior to its expiration, this conditional use permit may be extended for a period or periods not to exceed two (2) additional years in the aggregate.
2. Following any changes made to the site plan as a result of these conditions or other commentary, correspondence, or official requirement, and prior to issuance of a certificate of occupancy, the applicant shall submit a copy of the final site plan to the Building/ Planning Department for inclusion in the project file.
3. Development of the project site shall be in substantial conformance with the attached site plan (exhibit A). The City Planner or the Public Works Director shall determine the extent to which incremental or minor changes to the site plan and/or proposed operation meet this requirement.
4. The owner/operator of the facility shall be responsible for the ongoing and long-term maintenance of required improvements and landscaping to ensure that nuisance complaints are not received by the City. Any changes to landscaping and on/off site improvements throughout the life of the structure cannot be made without prior permission from the Building/Planning Department.
5. All City development fees and costs shall be paid in full to the City prior to issuance of any Certificate of Occupancy from the Building/Planning Department.
6. Construction drawings (Building and Improvement Plans, including site grading, drainage, utility and verification of accessibility) shall be submitted to the Building Department and to the City Engineer for review and approval. A building permit shall be acquired prior to start of any construction activities.
7. Any work within the public right-of-way shall require an encroachment permit, including payment of all associated fees.
8. The applicant shall prepare an irrigation plan for review and approval by the City Engineer.
9. The applicant shall prepare a site lighting plan for review and approval by the City Engineer. All exterior lights shall be shielded or otherwise oriented to prevent disturbance to surrounding or neighboring properties or traffic on Marie Street, and the adjacent airport.
10. All signage must be approved pursuant to the standards and guidelines of the Sign Ordinance prior to installation.
11. Prior to issuance of a certificate of occupancy, all conditions of approval shall be verified as complete by the Building and Planning Department. Any discrepancy or difference in

interpretation of the conditions between the owner/applicant and the Building/Planning Department shall be subject to review and determination by the Planning Commission.

12. The applicant shall comply with any conditions of approval from the Fresno County Fire Protection District.
13. The applicant shall comply with the San Joaquin Valley Air Pollution Control District.
14. Any modifications to the parking requirements shall be subject to review and approval by the Public Works Director.
15. The project water supply shall be taken from the existing six (10)-inch water main on Marie Street.
16. The project sanitary sewer service shall be connected to either the existing eight (10)-inch sewer line in Marie Street. Final determination of the connection point(s) shall be made by the City Engineer and may depend on design factors unknown at this time.
17. The project site's storm drain runoff shall be contained on site. Hydraulic calculations must be submitted to and approved by the City Engineer prior to the issuance of a building permit.
18. Trash enclosure(s) are required and must be approved by Mid Valley Disposal in regards to size and capacity. Trash bin(s) shall be stored entirely within the enclosure.
19. The proposed drive approaches on Naples and 11th Streets are to be designed and constructed consistent with City Standards or per approval of Public Works Director or City Engineer.
20. Fencing for the project is to be in accordance with the Security Plan included herein as Exhibit F.
21. Use of the facility in a manner other than that listed in the operational statement (exhibit G) shall be subject to review by the Planning Department.
22. Applicant shall comply with the Development Agreement approved by the City Council (Resolution 18-09) on January 23, 2018, and all provisions contained therein. The Development Agreement is hereby incorporated in its entirety by reference and any default of the Development Agreement by applicant shall also be considered a violation of the conditions of this Conditional Use Permit.
23. Cannabis odors will not be detectable from the property boundary or public right-of-way and that, in multi-tenant buildings, cannabis odors will not be detectable from the building exterior.
24. All commercial cannabis activities will occur within an enclosed building and will not be visible from the property boundary or public right-of-way.
25. Buildings that are proposed for growing purposes that would cause light to be emitted from any building roof or window (sometimes referred to as "light-assisted" or "mixed light" greenhouses) shall have no light will be visible through the roof and windows of grow areas from dusk till dawn.

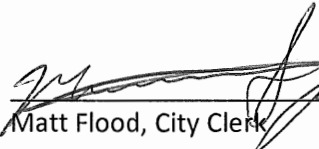
26. That all pesticide use will comply with the State Department of Pesticide Regulations.
27. Applicant will need to submit a water recycling plan, acceptable to the Public Works Director, demonstrating sufficient water supply for the proposed use, including a certification that the applicant may use that water legally under state law and, if water is used for irrigation purposes, that irrigation water will be recycled to the maximum extent feasible using best management practices. Compliance with this condition must be met before operations begin.
28. Applicant shall comply with all conditions included in Security Plan (Exhibit F). In addition, the applicant will provide funding for the City to install a City approved PTZ IP camera and necessary operational equipment on the city accessible property located by the intersection of Marie/Belmont. The camera will be integrated into the Police Department camera system and solely operated, monitored and recorded by Police Personnel. The installation to include, but not limited to wireless radio transmitters/receivers for the connectivity into the Police Department camera system. The owner operator of the facility shall be responsible for any maintenance.
29. Applicant is required to coordinate with PG&E for gas and power, ensuring adequate power for the operations. Compliance with this condition must be met before operations begin.
30. Prior to any operation, applicant must comply with state permits and authorizations needed to engage in the proposed use.
31. If approved, this CUP authorizes City inspections within the building and site, without notice, of any and all records required to be maintained under any local, state, or federal law.
32. Applicant must provide the City all information required by the state for any renewal of a state license related to commercial cannabis activity as well as the state licensing authority's decision on any such renewal.
33. Applicant is required to immediately provide notice to the City of any suspension or revocation of any state license issued pursuant to Business and Professions Code Section 26050 et seq.
33. Due to the sites proximity to the City's airport, applicant must comply with all Airport regulations relating to structures and development near an airport.
34. Exhibits A, B, C,D,E,F,G and H are attached and part of this Conditional Use Permit, defined as;  
Exhibit A: Site Plan  
Exhibit B: Site Plan with Emergency Landing Zone  
Exhibit C: Fresno County Airports Land Use Policy Plan Compatibility Criteria Table  
Exhibit D: California Airport Land Use Planning Handbook Inner Approach Zone Guidelines  
Exhibit E: California Airport Land Use Planning Handbook Traffic Pattern Zone Guidelines  
Exhibit F: Security Plan  
Exhibit G: Operational Statement  
Exhibit H: Conditional Use Permit Application



**PASSED AND ADOPTED** by the Planning Commission of the City of Mendota at a special meeting held on the 24<sup>th</sup> day of January, 2018, upon a motion by Vice-Chairperson Escobedo, a second by Commissioner Leiva, and by the following vote:

**AYES:** 5 – Chairperson Luna, Vice-Chairperson Escobedo, Commissioners Gutierrez, Leiva, and Romero.  
**NOES:** 0  
**ABSTAIN:** 0  
**ABSENT:** 0

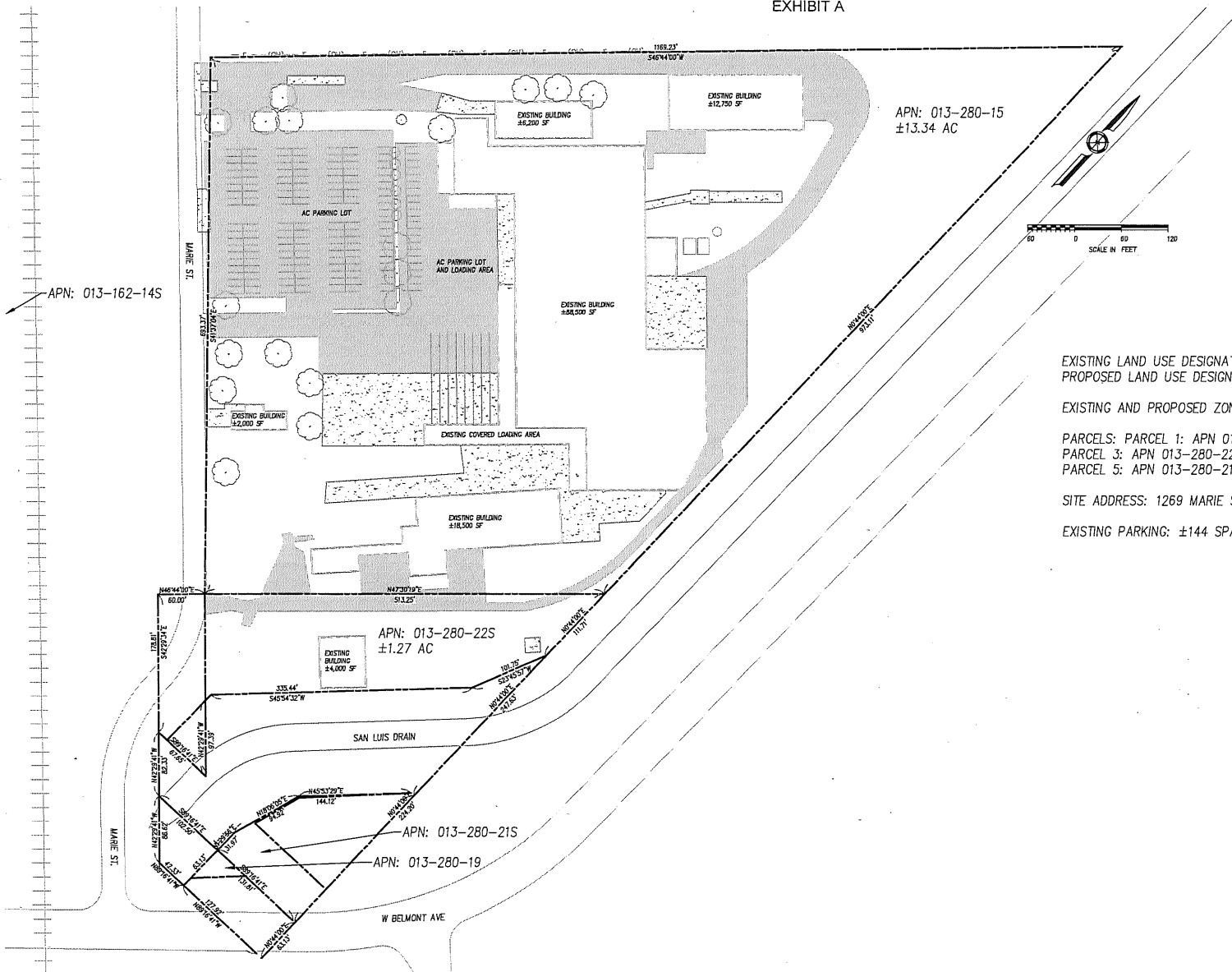
ATTEST:

  
Matt Flood, City Clerk

  
\_\_\_\_\_  
Juan Luna, Chair



EXHIBIT A

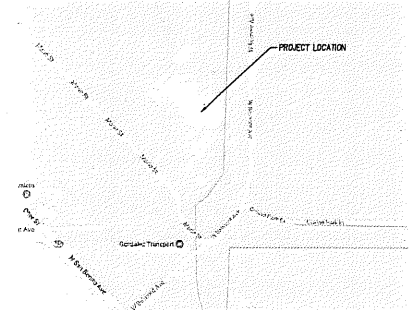


APN: 013-280-15  
±13.34 AC

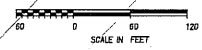
APN: 013-280-22S  
±1.27 AC

APN: 013-280-21S

APN: 013-280-19



VICINITY MAP



EXISTING LAND USE DESIGNATION: PUBLIC QUASI PUBLIC  
PROPOSED LAND USE DESIGNATION: LIGHT INDUSTRIAL

EXISTING AND PROPOSED ZONING DISTRICT: M-1 LIGHT MANUFACTURING

PARCELS: PARCEL 1: APN 013-280-15, PARCEL 2: APN 013-162-14S  
PARCEL 3: APN 013-280-22S, PARCEL 4: APN 013-280-19  
PARCEL 5: APN 013-280-21S

SITE ADDRESS: 1269 MARIE ST. MENDOTA, CA

EXISTING PARKING: ±144 SPACES

**CARTWRIGHT**  
ENGINEERS  
4180 Douglas Blvd, Suite 200  
Granite Bay, California 95746  
T (916) 978-4001  
www.cartwrightengineers.com

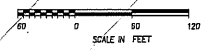
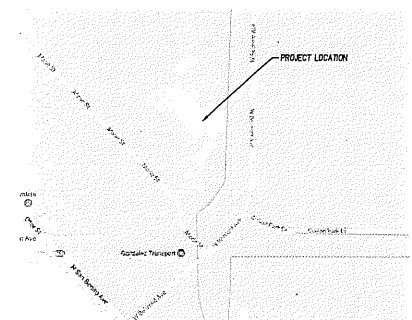
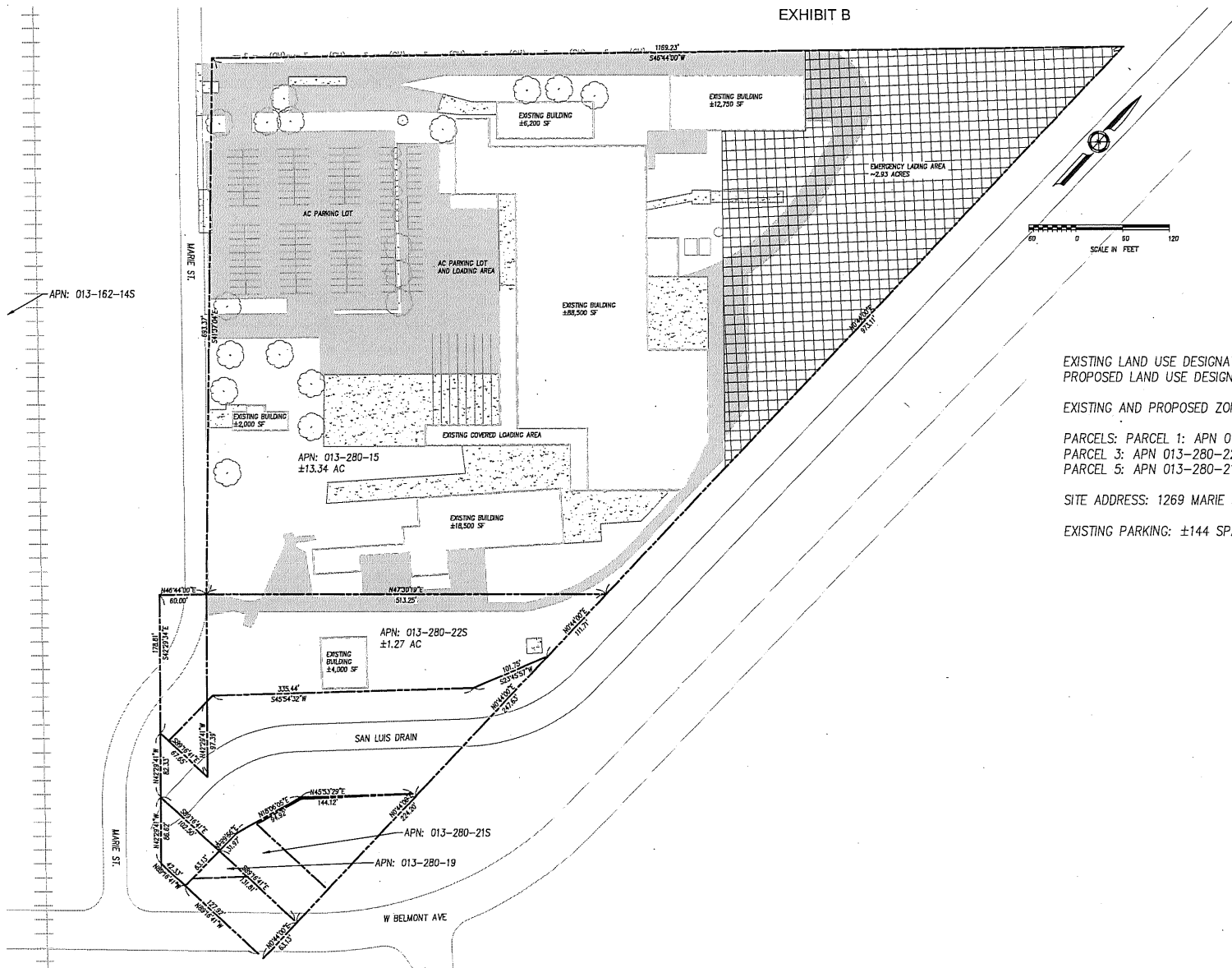
CUP SITE PLAN

CHH - SILVER CREEK  
1269 MARIE STREET, MENDOTA, CA

THIS SITE PLAN IS BASED ON RECORD INFORMATION AND CREATED FROM AN ORTHO  
RECTIFIED AERIAL PHOTO. IT SHALL BE UTILIZED FOR ILLUSTRATIVE PURPOSES ONLY.

10/20/2017  
SCALE 1" = 60'  
DRAWN BY: S. LAMB

EXHIBIT B



EXISTING LAND USE DESIGNATION: PUBLIC QUASI PUBLIC  
 PROPOSED LAND USE DESIGNATION: LIGHT INDUSTRIAL

EXISTING AND PROPOSED ZONING DISTRICT: M-1 LIGHT MANUFACTURING

PARCELS: PARCEL 1: APN 013-280-15, PARCEL 2: APN 013-162-14S  
 PARCEL 3: APN 013-280-22S, PARCEL 4: APN 013-280-19  
 PARCEL 5: APN 013-280-21S

SITE ADDRESS: 1269 MARIE ST. MENDOTA, CA

EXISTING PARKING: ±144 SPACES



4180 Douglas Blvd, Suite 200  
 Granite Bay, California 95746  
 T (916) 978-4001  
 www.cartwrightengineers.com

CUP SITE PLAN WITH LANDING AREA

CHH - SILVER CREEK  
 1269 MARIE STREET, MENDOTA, CA

THIS SITE PLAN IS BASED ON RECORD INFORMATION AND CREATED FROM AN ORTHO  
 RECTIFIED AERIAL PHOTO. IT SHALL BE UTILIZED FOR ILLUSTRATIVE PURPOSES ONLY.

10/20/2017  
 SCALE 1" = 60'  
 DRAWN BY: S. LAMB

# EXHIBIT C

TABLE 3

## AIRPORT/LAND USE SAFETY COMPATIBILITY CRITERIA

LAND USE CHARACTERISTICS	SAFETY ZONES <sup>1</sup>			
	Clear & Runway Zones	Inner Approach Zones <sup>2</sup>	Outer Approach Zones & Traffic Pattern Zone	Horizontal & Conical Zones
Residential Uses	-	(A,F)	(B,F)	+
Other Uses in Structures	-	(C,E,F)	(E,F)	+
Other Uses Not in Structures	(C,G)	(D)	+	+
Special Characteristics				
1. Distracting Light or Glare	-	-	-	(G)
2. Sources of Smoke	-	-	-	(G)
3. Electronic Interference	-	-	-	(G)
4. Attractor of Birds	-	-	-	+

NOTES: 1. See the Policy Plan maps for the location of the zones at each airport.

2. The inner approach zone extends to the point below where the approach surface intersects the horizontal surface.

### INTERPRETATION

+ ACCEPTABLE: Use is acceptable with little or no risks

( ) CONDITIONALLY ACCEPTABLE: Risk exist, but use is acceptable under conditions cited below.

A Density no greater than 1 dwelling unit per 3 acres.

B Density no greater than 4 dwelling units per acre.

C No uses attracting more than 10 persons per acre.

D No uses attracting more than 25 persons per acre.

E No schools, hospitals, nursing homes, or similar uses.

F At least 20% of area open (having a size and shape such that a small aircraft could conceivably make an emergency landing without damage to buildings or serious injury to aircraft occupants).

G Characteristic cannot reasonably be avoided or located outside the indicated safety zone.

- UNACCEPTABLE: Use is unacceptable due to associated high risks.

**Nature of Risk**

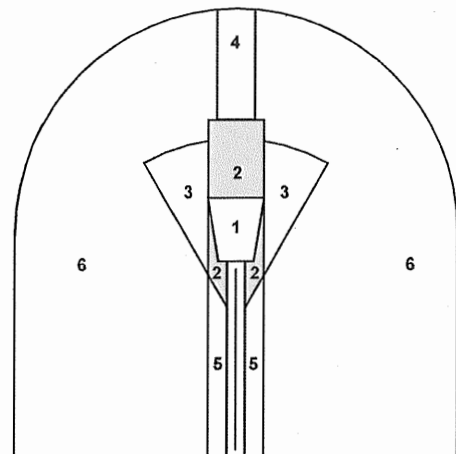
- Normal Maneuvers
  - Aircraft overflying at low altitudes on final approach and straight-out departures
- Altitude
  - Between 200 and 400 feet above runway
- Common Accident Types
  - Arrival: Similar to Zone 1, aircraft under-shooting approaches, forced short landings
  - Departure: Similar to Zone 1, emergency landing on straight-out departure
- Risk Level
  - High
  - Percentage of near-runway accidents in this zone: 8% - 22%



FINAL APPROACH

**Basic Compatibility Policies**

- Normally Allow
  - Agriculture; non-group recreational uses
  - Low-hazard materials storage, warehouses
  - Low-intensity light industrial uses; auto, aircraft, marine repair services
- Limit
  - Single-story office buildings
  - Nonresidential uses to activities that attract few people
- Avoid
  - All residential uses except as infill in developed areas
  - Multi-story uses; uses with high density or intensity
  - Shopping centers, most eating establishments
- Prohibit
  - Theaters, meeting halls and other assembly uses
  - Office buildings greater than 3 stories
  - Labor-intensive industrial uses
  - Children's schools, large daycare centers, hospitals, nursing homes
  - Stadiums, group recreational uses
  - Hazardous uses (e.g. aboveground bulk fuel storage)



Refer to Chapter 3 for dimensions.

	Maximum Residential Densities	Maximum Nonresidential Intensities	Maximum Single Acre
	Average number of dwelling units per gross acre	Average number of people per gross acre	2x the Average number of people per gross acre
Rural	See Note A	10 – 40	50 – 80
Suburban	1 per 10 - 20 ac.	40 – 60	80 – 120
Urban	0	60 – 80	120 – 160
Dense Urban	0	See Note B	See Note B

Note A: Maintain current zoning if less than density criteria for suburban setting.

Note B: Allow infill at up to average intensity of comparable surrounding uses.

FIGURE 4C

**Safety Zone 2 – Inner Approach/Departure Zone**

# EXHIBIT E

## Nature of Risk

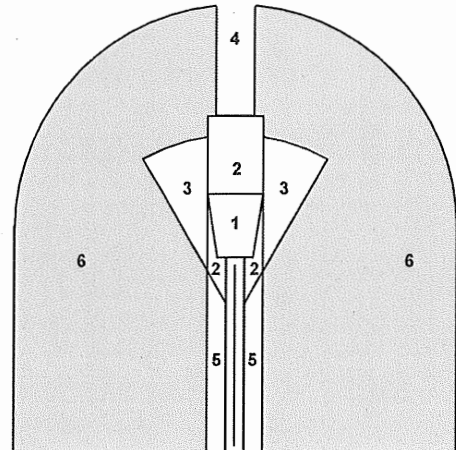
- Normal Maneuvers
  - Aircraft within a regular traffic pattern and pattern entry routes
- Altitude
  - Ranging from 1,000 to 1,500 feet above runway
- Common Accident Types
  - Arrival: Pattern accidents in proximity of airport
  - Departure: Emergency landings
- Risk Level
  - Low
  - Percentage of near-runway accidents in this zone: 18% - 29% (percentage is high because of large area encompassed)



IN TRAFFIC PATTERN

## Basic Compatibility Policies

- Normally Allow
  - Residential uses (however, noise and overflight impacts should be considered where ambient noise levels are low)
- Limit
  - Children's schools, large day care centers, hospitals, and nursing homes
  - Processing and storage of bulk quantities of highly hazardous materials
- Avoid
  - Outdoor stadiums and similar uses with very high intensities
- Prohibit
  - None



Refer to Chapter 3 for dimensions.

	Maximum Residential Densities	Maximum Nonresidential Intensities	Maximum Single Acre
	Average number of dwelling units per gross acre	Average number of people per gross acre	4x the Average number of people per gross acre
Rural	No Limit – See Note A	150 – 200	600 – 800
Suburban	No Limit – See Note A	200 – 300	800 – 1,200
Urban	No Limit – See Note A	No Limit – See Note B	No Limit – See Note B
Dense Urban	No Limit – See Note A	No Limit – See Note B	No Limit – See Note B

Note A: Noise and overflight should be considered.

Note B: Large stadiums and similar uses should be avoided.

FIGURE 4G

## Safety Zone 6 – Traffic Pattern Zone

# EXHIBIT F

**City of Mendota  
Conditional Use Permit Application  
1269 Marie Street Industrial Park**

## Security Plan

- 1. Perimeter and interior site security (around production buildings).**
  - Perimeter Surveillance to include 180-degree fixed cameras every 100 feet supplemented with PTZ cameras strategically located to focus in on events to provide identifiable recognition.
  - The 180 degree cameras analytics will also provide alarm outputs to notify Security of an event and activate the appropriate PTZ camera.
  - Perimeter fence intrusion detection system consists of a wireless system. The system that reacts to motion and / or vibration and tied to the surveillance system to activate cameras upon events / activity.
  - Guard Station at front gate monitors video from cameras and alarms events as they occur. Duress alarm activates on site duress lights connected to local police /911.
  - Front main entrance gate is monitored by guard station and video surveillance with access being granted via access control system card reader / keypad located at gate.
  
- 2. Fencing**
  - Perimeter fencing to be a combination of 7' high, ornamental steel tube fencing and gate as well as 7' high, Chain-link with concertina wire.
  - Ornamental swing gate at main vehicle entrance with access controlled gate operators.
  - Perimeter fence intrusion detection system a 2-event system that reacts to motion and / or vibration and tied to the surveillance system to activate cameras upon events / activity immediately notifying the onsite security.
  
- 3. Alarm systems (notification/silent/audible) interior / exterior.**
  - Intrusion detection system is a collective combination of IDS, CCTV and ACS integrated together to detect, notify and capture live video for identification and forensics.
  - Duress Alarm buttons will be located at 24x7 stationed guard station at front entrance gate as well as strategic locations within the facility itself to activate duress alarm notifying facility staff and authorities.
  - Building interiors will have a combination of motion & contact devices for intrusion detection and alarm.
  - Front gate and all building entry / exit doors to be access controlled.
  
- 4. Security camera system details, exterior. Detail multi-point, fixed, PTZ... and monitoring.**
  - Security camera system consists of a high-end commercial / government IP solution.
  - CCTV System will be monitored by on-site security personnel 24x7, have remote monitoring capabilities and will have video storage capacities capable of 15 FPS quality video storage for at least 90 Days.
  - IP Cameras will be a combination of multi-sensor, fixed and PTZ integrated together to provide the highest quality of video.

**5. Site Lighting**

- All exterior lighting shall be white light using LED lamps with shielded, downward facing fixtures to limit glare and light trespass. Color temperature shall be between 2700K and 4100K.
- Exterior lighting shall be placed such that visibility and security monitoring of the premises is possible.
- Tree canopies shall not interfere with or block lighting which would create shadows and areas of concealment.

**6. Access Control**

- Signs prohibiting trespass upon the property will be installed at each driveway.
- Staff members shall wear laminated or plastic-coated identification badge in a conspicuous manner. Identification badge will include the licensee's "doing business as" name and state license number, the employee's first name and assignment, an employee number exclusively assigned to that employee, and a color photograph of the employee.
- Visitors with a lawful business purpose for accessing the facility shall be required to sign in and out. Visitors shall conspicuously wear a badge identifying that person as a visitor during all times they are on the premises.
- All shipping and receiving will happen between the hours of 6:00 a.m. Pacific Time to 10:00 p.m. Pacific Time.
- The Chief of Police or his or her designee will have full access to the facility. Applicant requests notice 24-hours prior to any visit for which such notice is non-detrimental to intended purpose of visit.

**7. Security Personnel**

- Tenants will be required to designate a security representative to notify local law enforcement of situations noted in the proposed California Code of Regulations Title 16 Division 42 Chapter 1 Article 3 Section 5036 Subsection (a).
- Applicant will maintain a contract with a state-licensed private patrol operator approved to conduct business in the City of Mendota. Services contracted will include:
  - Intrusion alarm response
  - Uniformed guard physically on site at all times



EXHIBIT G

**City of Mendota  
Conditional Use Permit Application  
1269 Marie Street Industrial Park**

**Operational Statement**

Project Site Address	1269 Marie Street Mendota, CA 93640
Assessor's Parcel Number	013-280-15, 013-280-22S, 013-280-14S, 013-280-19, 013-280-21S
Size of Site	14.61 acres
Existing Zoning Districts	M-1
Existing Uses	Cold Storage and Packing Facility
Proposed Uses	Agricultural Processing and all uses allowed per City of Mendota Ordinance No. 17-13

**Introduction**

Applicant, subsidiary, or assigned ("Applicant") proposes to bring to the City of Mendota ("City") an industrial center featuring leasable space for agricultural processing and all allowable uses per City of Mendota Ordinance No. 17-13.

The industrial center will be a source of direct employment for the City which aligns with Goal LU-8 of the 2009 Mendota General Plan Update. Beyond the direct jobs offered, the center will act as a source of economic activity for the City's ancillary businesses that will provide materials and services required by the new businesses. Applicant is committed to creating a mutually beneficial and transparent relationship with the City of Mendota.

**Overview**

The construction will consist of renovations to an existing cold storage packing facility in order to demise the existing buildings into leasable suites. Applicant will be the developer of the industrial center and will set certain minimum requirements on its tenants, but final build-out of the suites will be determined by the tenants to meet their specific needs. The tenants will be responsible for installing odor mitigation measures to prevent detection of any odor outside of their unit.

Applicant will provide perimeter security for the center and maintain access control at the front gate to the property. Applicant will also provide video monitoring of all outdoor areas, external entrances, and any common interior corridors. Video surveillance within the suites will be the responsibility of the tenants. Applicant will maintain a line of contact with the City Police Department in case of calls for service.

**Tenant Zoning Assignment**

As part of Development Agreement between Applicant and City, Applicant is requesting the City grant Applicant ability to assign proposed tenants zoning for all uses allowed by City of Mendota Ordinance No. 17-13. Applicant shall vet proposed tenants. Once proposed tenant is approved, tenant, Applicant and City shall execute a standard proof of authorization to conduct uses allowed by City of Mendota Ordinance No. 17-13. Authorization shall be conditioned upon State of California approval of applicable licensing and any additional documentation required by the City of Mendota. Local Mendota business license and tenants leases with applicant will conditioned on compliance with term of lease agreement, local building codes and other regulations including payment of development agreement fees. Revocation of any tenant's authorization for any reason shall have no effect on any other current or future tenants. Applicant shall not be held responsible for any violations by tenants.

**Hours of Operation**

Employee ingress and egress will typically occur between 9:00am and 6:00pm. Due to the nature of the agriculture industry, the facility will need to be fully operational 24 hours a day, seven days a week, but Applicant will encourage tenants to keep regular hours of operation.

**Mendota Airport**

Applicant will designate 15- 20 percent of the development as shown on Exhibit B as an emergency landing area pursuant to the requirements of the Inner Approach Zone and Traffic Patter Zone in the Fresno County Airports Land Use Policy Plan (FCALUPP). Applicant is requesting that the FCALUPP Inner Approach Zone Maximum Nonresidential Intensities for this project be raised from 10 per acre to 40 per acre which would still be in line with the recommendations in the California Airport Land Use Planning Handbook.

**Community Relations Manager**

Applicant will provide the City Manager with the name, email address, and telephone number of a Community Relations manager to communicate with the surrounding businesses regarding any complaints. Applicant will make good faith efforts to encourage neighbors to contact the Community Relations Manager to resolve any issues prior to contacting the City. Tenants will be required to report any complaints from neighbors or the City immediately to Applicant.

**Odor Control Plan**

Applicant's goal is to ensure tenants implement odor control procedures per City and State guidelines. Applicant will require tenants to provide a comprehensive odor control plan as part of their improvement. This plan should utilize technology that includes a specific carbon media design to remove the odor producing elements of their operations. Tenant should have filters installed on any vents to control any odor from reaching outside of the building.

**Utility Use Plan**

Applicant plans to use existing power for first tenant build-outs. Applicant has applied for a power upgrade with PG&E, application number 113725150, and has begun working with Luis Murrieta to complete the upgrade. No solar power is planned due to proximity to Mendota Airport

Applicant intends to use nearest municipal water source. The estimated water use is 8000gal/day.

**Security Plan**

See attached security plan.

**Attachments**

Exhibit A: Site Plan

Exhibit B: Site Plan with Emergency Landing Zone

Exhibit C: Fresno County Airports Land Use Policy Plan Compatibility Criteria Table

Exhibit D: California Airport Land Use Planning Handbook Inner Approach Zone Guidelines

Exhibit E: California Airport Land Use Planning Handbook Traffic Pattern Zone Guidelines

Exhibit F: Security Plan



# City of Mendota

Community Development Department 643  
Quince Street Mendota, CA 93640

## Planning Master Application Form

Received by: \_\_\_\_\_

Application No.: 17-43

Date: \_\_\_\_\_

**Check all that apply:**

<input type="checkbox"/> Plan Amendment	<input type="checkbox"/> Site Plan Review	<input type="checkbox"/> Annexation
<input type="checkbox"/> Rezone	<input type="checkbox"/> Variance	<input type="checkbox"/> Extension (indicate applicable process) <sup>2</sup>
<input checked="" type="checkbox"/> Conditional Use Permit	<input type="checkbox"/> Minor Deviation	<input type="checkbox"/> Revision (indicate applicable process) <sup>3</sup>
<input type="checkbox"/> Tentative Tract Map	<input type="checkbox"/> Zoning Text Amendment	<input type="checkbox"/> Temporary Use Permit <sup>2</sup>
<input type="checkbox"/> Tentative Parcel Map	<input type="checkbox"/> Lot Merger <sup>1</sup>	<input type="checkbox"/> Other:
<input type="checkbox"/> Final or Parcel Map	<input type="checkbox"/> Lot Line Adjustment	

Project Address: 1269 Marie St. Mendota, CA

APN(s): 013-280-15, 013-280-22S, 013-280-14S, 013-280-19, 013-280-21S

Size of Site: Sq. Ft. \_\_\_\_\_ Acres 14.61

Zoning Designation: M-1 General Plan Designation: \_\_\_\_\_

Project Description (attach additional pages if needed): See attached operational statement.

List any previously approved and/or pending projects associated with this project site: \_\_\_\_\_

**Please read carefully before signing or filing: Submittal of this application does not imply approval of any project by the City of Mendota. Application approval will become null and void if it is determined that approval was based on omissions or inaccurate information provided by the applicant.**

Primary Contact (check all that apply):

Applicant  Owner  Other

Name: Graylon Wright

Signature: \_\_\_\_\_

Company/Organization: Loder Construction Inc.

Address: 4168 Douglas Blvd. Ste. 100

City: Granite Bay

State: CA

Phone: 916-791-0445

Email: gwright@loderinc.com

**Check all that apply:**

Applicant  Owner  Other

Name: Tim McGraw

Signature: \_\_\_\_\_

Company/Organization: Marie Street Development, LLC

Address: 2443 Filmore St 308-3336

City: San Francisco

State: CA

Phone: 708-533-2424

Email: \_\_\_\_\_

**Check all that apply:**

Applicant  Owner  Other

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Company/Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Notes:**

- \* This application will not be accepted for processing without the required attachments and fee deposit.
- \* Please refer to the corresponding Application Submittal Checklist(s) to determine required attachments.
- \* Please refer to the City of Mendota Planning Application Fee list to determine required fee deposit(s).

<sup>1</sup> Use Lot Line Adjustment Checklist as applicable

<sup>2</sup> No supplemental application or checklist is required

<sup>3</sup> Use same supplemental application or checklist as required for an original submittal



# City of Mendota

## Environmental Supplement

Community Development Department 643  
Quince Street Mendota, CA 93640

App. No. 17-43

This form is intended to assist the City in compliance with the California Environmental Quality Act (CEQA). While certain projects are exempt from CEQA, other projects may be subject to varying levels of environmental review. This form must accompany submittal of the following applications: Plan Amendment, Rezone, Conditional Use Permit, Tentative Tract Map, Tentative Parcel Map, Parcel Map, Site Plan Review, Variance, and Annexation. If the information provided is incomplete or inaccurate, it may negatively impact the City's ability to comply with CEQA, resulting in a delay to the processing of your project or subjecting it to legal challenge. If you have any questions about the items requested or if you wish to obtain information about your proposal, please contact the Community Development Department at 559.655.3291.

**For applications subject to this Environmental Supplement, please answer the following:**

**1. Narrative description of proposed project** - Describe outstanding characteristics, architectural features, type of construction, number of stories, resulting activities, and other major features.  
See attached operational statement.

**2. If Residential Use is proposed, indicate number of dwelling units:** N/A

**3. If Non-Residential Use is proposed, identify:** Agricultural Processing and All Uses allowed by City of Mendota Ordinance No. 17-43

- a. **Non-Residential Floor Area:** 95,895 sf
- b. **Estimated Total Number of Employees:** TBD by final occupant make up
- c. **Total Number of Off-Street Parking Spaces:** +/- 144

**4. If the project involves a Site Plan Review or Rezoning for industrial use, describe in detail:**  
N/A

**5. Identify probable sources of noise generated by the project. If noise is anticipated to be moderate or severe, describe any measures taken to reduce the effects:**  
N/A

**6. Describe known sources of noise in the vicinity that may impact the proposed project:**  
N/A

**7. Describe characteristics of the project that may cause smoke, odors, gases, or fumes:**

N/A

**8. Describe existing use of and structures on the site along with other site characteristics:**

There are nine (9) existing structures on the property in question totaling 119,065 square feet: four (4) open storage canopies totaling 21,800 sf; one (1) residence totaling 1,370 sf; two (2) warehouses totaling 95,895 sf used for cold storage, packing, and office; one (1) guard house totaling 64 sf; and one (1) scale house totaling 154 sf. Remainder of site is used for parking and circulation.

**9. Describe the existing use of adjacent and/or nearby sites:**

To the northwest, there is a vacant field and the Mendota Airport. To the southwest, vacant land along a railway. To the east, an abandoned cogeneration plant. To the southeast, vacant land.

**10. Is the site within 200 yards of an existing or proposed freeway?** Yes  No

**11. Is the site within 200 yards of a railroad?** Yes  No

**12. Describe any potential sources of air pollution from the project:**

N/A

**13. Anticipated volume of water to be used (gallons per day):** 8000 gallons per day

**14. Estimated volume of liquid waste (gallons per day):** TBD by final occupant make up

**15. Are any hazardous wastes anticipated? If so, describe:**

N/A

**16. Anticipated amount of solid waste (cubic yards per day/week, etc.):** TBD by final occupant make up

**17. If the property subject to a Williamson Act Land Conservation Contract? If so, how does the project propose to address that?**

N/A

*To the best of my knowledge, the foregoing information is true.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**BEFORE THE PLANNING COMMISSION  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE PLANNING COMMISSION      RESOLUTION NO. PC 20-03  
OF THE CITY OF MENDOTA MAKING A DETERMIN-  
ATION OF EXEMPTION FROM THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT AND APPROVING  
REVISIONS TO A CONDITIONAL USE PERMIT FOR  
APPLICATION NO. 20-24, THE LEFT MENODTA 1  
LLC PROJECT AT 1269 MARIE STREET (APNs  
013-280-15 & 22S)**

**WHEREAS**, on December 4, 2020 the City of Mendota received Application No. 20-24, submitted by Chris Lefkovitz on behalf of Left Mendota 1, LLC and proposing the construction and operation of approximately 2.0 acres of greenhouses at the existing commercial cannabis facility at 1269 Marie Street (Fresno Co. APNs 013-280-15 & 22S)

**WHEREAS**, the project site is designated Light Industrial by the City of Mendota 2005-2025 General Plan and is zoned M-1/CO (Light Manufacturing/Commercial Cannabis Overlay District); and

**WHEREAS**, the proposed use is permitted in the M-1/CO zone subject to approval of a conditional use permit and entrance into a development agreement as described in Mendota Municipal Code Chapters 8.37 and 17.99; and

**WHEREAS**, on December 15, 2020 the Mendota Planning Commission conducted a public hearing at a regular meeting to consider Application No. 20-24; and

**WHEREAS**, on December 4, 2020 notice of said hearing was published in *The Business Journal*, similar notices were individually mailed to property owners within 300 feet of the project site, and a copy of the notice was posted in the Mendota City Hall bulletin window; and

**WHEREAS**, approval of the planned development consists of a “lease, permit, license, certificate, or other entitlement for use”, and is therefore a “project” pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* (“CEQA”) and the CEQA Guidelines, California Code of Regulations Title 14, Chapter 3, Section 15000, *et seq.*; and

**WHEREAS**, as the agency primarily responsible for carrying out or approving said project, the City of Mendota assumes the role of lead agency pursuant to CEQA; and

**WHEREAS**, the Planning Commission finds that the proposal does not have the potential to have a significant effect on the environment and meets the criteria described in CEQA Guidelines Section 15061(b)(3); and

**WHEREAS**, the Planning Commission has made the following findings pursuant to Mendota Municipal Code Section 17.84.050, said findings substantiated in the record:

- a. The site for the proposed use is adequate in size and shape to accommodate such use and all yards, spaces, walls and fences, parking, loading, landscaping and other features to adjust such use with the land and uses in the neighborhood;
- b. That the site for proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
- c. That the proposed use will have no adverse effect on abutting property or the permitted use thereof;
- d. That the conditions stated in the project approval are deemed necessary to protect the public health, safety and general welfare.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the City of Mendota that:

1. Application No. 20-24 is exempt from the California Environmental Quality Act under CEQA Guidelines Section 15061(b)(3).
2. The revision to the conditional permit as proposed in Application No. 20-24 is hereby approved as illustrated in Attachment "A" hereto subject to the conditions contained in Attachment "B" hereto.

---

Juan Luna, Chairperson

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the Planning Commission at a regular meeting of said Commission, held at Mendota City Hall on the 15<sup>th</sup> day of December, 2020, by the following vote:

**AYES:**

**NOES:**

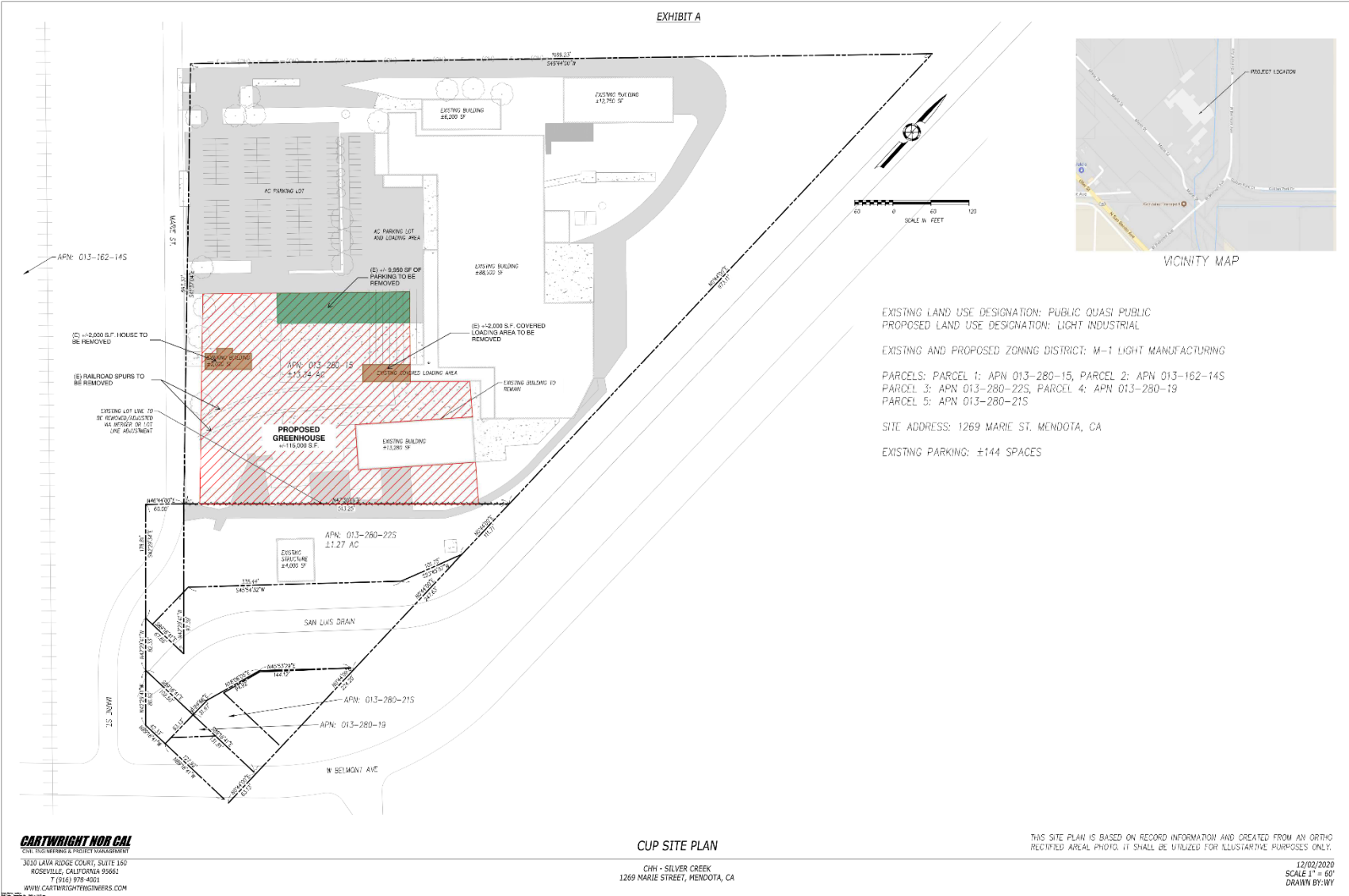
**ABSENT:**

**ABSTAIN:**

---

Celeste Cabrera-Garcia, City Clerk

# ATTACHMENT "A TO RESOLUTION NO. PC 20-03 SITE PLAN FOR APPLICATION NO. 20-24





ATTACHMENT "B" TO RESOLUTION NO. PC 20-03  
CONDITIONS OF APPROVAL  
APPLICATION NO. 20-24; 1269 MARIE STREET (APN 013-280-15 & 22S)  
LEFT MENDOTA 1, LLC

As may be used herein, the words "applicant", "owner," "operator", and "developer" shall be interchangeable, excepting when the word is indicated in ***bold italics***. In that event, the condition of approval is specific to the entity named.

Operations

1. The operator shall acquire and maintain any licenses, approvals, waivers, or similar that may be issued by the State of California requisite to cannabis operations and shall comply with all provisions of any State regulatory agency that may have oversight over said operations.
2. The operator shall acquire and maintain all City of Mendota licenses pursuant to Mendota Municipal Code Chapter 8.37, including payment of applicable fees.
3. The contractor and any subcontractor(s) shall acquire a City of Mendota business license, including payment of any applicable business license fees, prior to commencing construction.
4. The City will monitor the operation for violations of conditions of approval. Penalty for violation may include but is not limited to warnings, fines, and/or permit revocation.

General & Site

5. This conditional use permit shall not become operative until recordation of a development agreement pursuant to MMC Section 8.37.050(1).
6. The Conditions of Approval for Application No. 17-43 contained within Resolution No. PC 18-01 are incorporated herein by reference and shall remain in full force and effect unless expressly or impliedly superseded herein.
7. The conditional use permit detailed within Application No. 20-24 shall expire two (2) years following the date of its approval unless, prior to expiration, a building permit for the requested site modifications is issued by the City of Mendota and construction is commenced and being diligently pursued. At the discretion of the City Manager, and upon valid request not less than thirty (30) days prior to its expiration, this planned development may be extended for a period or periods not to exceed two (2) additional years in the aggregate.
8. Development shall comply with all applicable provisions of the City of Mendota General Plan and the Mendota Municipal Code (MMC), including but not limited to: potable water protection regulations (Chapter 13.30), business licensing requirements (Title 5), and Building Code Standards (Title 15); the Subdivision

Ordinance (Title 16); the regulations of the applicable zone district(s) and other relevant portions of the Zoning Ordinance (Title 17); and the City of Mendota Standard Specifications and Standard Drawings, unless exceptions therefrom are approved by the City Engineer.

9. Use of the site shall conform to all applicable requirements for the M-1 Light Manufacturing Zone District as modified by the provisions of the CO Commercial Cannabis Overlay District.
10. The site plan shall be revised to reflect the comments of the City Engineer and City Planner and to depict locations and dimensions of existing and proposed features, utilities, and other improvements.
11. Construction drawings (building and improvement plans; site, grading, irrigation, and landscaping, as applicable) shall be submitted to the Planning and Building Department and City Engineer for review and approval. A building permit shall be acquired prior to start of any construction activities.
12. No new landscaping is required. Any existing landscaping damaged or destroyed as a result of construction shall be repaired or replaced in-kind by the applicant at the discretion of the City Planner.
13. The applicant shall provide a lighting plan for the review and approval of the City Engineer. All exterior lights shall be shielded or otherwise oriented to prevent disturbance to surrounding or neighboring properties or traffic on abutting rights-of-way.
14. The applicant shall consult with and shall comply with the requirements of the San Joaquin Valley Air Pollution Control District, including but not limited to compliance with Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions) and Rule 9510 (Indirect Source Review).
15. The applicant shall consult with and shall comply with the requirements of the Fresno County Fire Protection District/CAL FIRE, including but not limited to requirements related to sprinklers, fire hydrants, and fire access.
16. The developer shall comply with Health and Safety Code Section 7050.5 and Public Resources Code Sections 5097.98, and 21083.2 and related statutes regarding regulation of cultural and historical resources that may be discovered on the site.
17. Development of the project site shall be in substantial conformance with the Site Plan dated December 2, 2020 as incorporated herein. The City Planner shall determine the extent to which incremental or minor changes to the site plan, the landscape plan, and/or the operational statement meet this requirement.
18. Any reduction to the number of parking spaces on the site shall be subject to review by the City Planner for compliance with MMC Section 17.60.050.

19. Following any changes made to the site plan as a result of these conditions or other commentary, correspondence, or official requirement, the applicant shall submit a copy of the final site plan as revised to the Planning Department for inclusion in the project file. Changes made pursuant to these conditions shall be considered minor or incremental.
20. Prior to issuance of a certificate of occupancy, all relevant conditions of approval shall be verified as complete by the Planning Department, and any and all outstanding fees shall have been paid. Any discrepancy or difference in interpretation of the conditions between the subdivider and the Planning Department shall be subject to review and determination by the Planning Commission.
21. All above-ground features including but not limited to lighting, fire hydrants, postal boxes, electrical and related boxes, and backflow devices shall be installed outside of the public-right-of-way. All utilities shall be installed underground.
22. Hours of construction shall be limited to 6:00 AM to 7:00 PM, Monday through Saturday.
23. Construction debris shall be contained within an on-site trash bin and the project site shall be watered for dust control during construction.
24. Any non-structural fencing shall be subject to approval by the Community Development Department consistent with Standard Drawing Nos. M-3 through M-7.
25. The applicant shall comply with all relevant components of the California Building Code and associated trade codes.
26. All signage must be approved pursuant to the standards and guidelines of the Mendota Municipal Code prior to installation.
27. Development shall at all times respect existing or new easements by, for, and between all private and public entities, including but not limited to the City of Mendota.
28. It shall be the responsibility of the subdivider to grant/secure easements as necessary for the installation and maintenance of private utilities, including but not limited to electricity, gas, telephone, and cable television.
29. Connection points for water and wastewater shall be determined by the City Engineer. Connections shall be made in accordance with City of Mendota standards and shall be coordinated with the Director of Public Utilities.
30. The applicant shall comply with the City of Mendota Cross-Connection Control Regulations contained within MMC Section 13.24.
31. The applicant shall coordinate with the City Engineer and Mid Valley Disposal to establish necessary solid waste procedures and facilities.

### Water System Improvements

32. The site plan shall be revised to illustrate existing water facilities.
33. The project shall connect make connection(s) to the City water system as determined by the City Engineer.
34. The improvement plans shall include the location of existing water mains, valves, and valve boxes located in adjacent streets that the proposed water system is to be connected to.
35. All connections to the existing water mains shall include a temporary reduced pressure double check backflow preventer (see Standard Drawing No. W-8) and follow the connection procedures outlined in that standard, or exhibit compliance with AWWA Standard C651-05.
36. Fire hydrants shall be spaced not to exceed 300 feet on center and shall be individually valved between the hydrant and the water system.
37. Fire flow conditions are subject to review and approval by the Fresno County Fire Protection District/CAL FIRE.
38. A meter, meter box, and service shall be installed to each unit. Applicant shall obtain meter type, size and service requirements from the Public Utilities Department and/or the City Engineer. The construction of the water service with meter shall be installed per Standard Drawing No. W-1 and Standard Specifications.
39. All water meters shall be Badger Model E Series with Nicor Connector (E-Series Ultra Plus for sizes 3/4" and 5/8") with Badger Model Orion CMNA-N Cellular Endpoint with Nicor Connector fully loaded with through lid mounting kit
40. No water services are allowed within drive approaches.
41. The project shall comply with City of Mendota's Automated Water Meter Reading System

### Sewer System Improvements

42. The site plan shall be revised to illustrate existing sewer facilities.
43. The project shall connect make connection(s) to the City wastewater system as determined by the City Engineer.
44. No sewer laterals are allowed within driveways. All laterals and cleanouts shall be installed per Standard Drawings No. S-7A and M-1.

### Storm Drain Improvements

45. To ensure proper spacing between underground facilities and allow for unimpeded placement of brass cap monuments in the road surfaces at the intersections of the streets, the location of sewer mains shall conform to Standard Drawing No. M-1.
46. Storm drainage facilities shall be constructed per City of Mendota Standard Drawings and Specifications.
47. If applicable, valley gutter construction shall be consistent with City of Mendota Standard Drawing No. ST-14 unless an alternate design is approved by the City Engineer.

### Streets

48. Any work within the City of Mendota right-of-way shall require an encroachment permit.
49. Any work within Caltrans right-of-way shall require an encroachment permit.
50. All concrete work, including curbs, gutters, valley gutters, sidewalks, drive approaches, curb ramps, and other concrete features shall contain a minimum of six (6) sacks of cementous material per cubic yard unless otherwise approved by the City Engineer.
51. Any broken, damaged, or substandard sidewalk, curb, gutter, or pavement along the project frontages, or any of the above damaged during construction wherever located, shall be removed and replaced as directed by the City Engineer consistent with City Standard Drawings.
52. Drive approaches, as necessary, shall be installed consistent with Standard Drawing No. ST-15.

### Fees

53. This project is also subject to a development agreement. Fees discussed in that agreement are not included herein and are in addition to this section.
54. The applicant shall be responsible for payment of any and all outstanding planning, building, plan check, and engineering fees prior to issuance of a certificate of occupancy.
55. Concurrently with submission of improvement and/or building plans, the applicant shall deposit with the City of Mendota funds in an amount estimated by the City Engineer and/or Building Official, respectively, to be sufficient to offset costs to the City for review of such plans. In the event that such funds are not sufficient to cover costs to the City, the City Engineer and/or Building Official, as appropriate, shall contact the applicant to request additional funds, which the applicant shall then deposit with the City.

56. The applicant shall pay to the City of Mendota development impact fees consistent with the City's current Development Impact Fee Schedule (January 2007). Fees are due in full prior to issuance of a certificate of occupancy.
57. The applicant shall be responsible for payment of fees to the Mendota Unified School District and shall provide the City with evidence of payment, or evidence of the District's determination that no payment is required, prior to issuance of a certificate of occupancy.
58. The applicant shall be responsible for payment of Fresno County Regional Transportation Mitigation Fees and Fresno County Public Facilities Impact Fees and shall provide the City with evidence of payment, or evidence of the County's determination that no payment is required, prior to issuance of a certificate of occupancy.

**BEFORE THE PLANNING COMMISSION  
OF THE  
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE PLANNING COMMISSION    RESOLUTION NO. PC 20-04  
OF THE CITY OF MENDOTA RECOMMENDING  
THAT THE CITY COUNCIL OF THE CITY OF MENDOTA  
ENTERS INTO A DEVELOPMENT AGREEMENT WITH  
LEFT MENDOTA 1, LLC REGARDING COMMERCIAL  
CANNABIS ACTIVITIES AS DETAILED IN APPLICATION  
NO. 20-24**

**WHEREAS**, California Government Code Section 65865 provides that any city may enter into a development agreement with any person having a legal authority or equitable interest in real property for the development of such property; and

**WHEREAS**, the proposed project meets the objectives of the project proponent as listed in the project application and ensures that certain requirements are implemented that promote the public health, safety, and welfare of the community, and assures the developer of certainty in the development of the property; and

**WHEREAS**, the Planning Commission of the City of Mendota has conducted a duly noticed public hearing, as required by law, to consider Application No. 20-24, which includes a proposed development agreement for the property located at 1269 Marie Street (APNs 013-280-15 & 22S); and

**WHEREAS**, as part of Application No. 20-24, the revisions to the conditional use permit contained within Application No. 17-43 were considered and approved by the Planning Commission in part upon the condition that said revisions would not become operative until recordation of a development pursuant to Mendota Municipal Code Section 8.37.060

**WHEREAS**, the Planning Commission finds that the proposal does not have the potential to have a significant effect on the environment and meets the criteria described in CEQA Guidelines Section 15061(b)(3); and

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Mendota recommends that the City Council of the City of Mendota enters into a development agreement in substantially the form contained in Exhibit "A" hereto.

\_\_\_\_\_  
Juan Luna, Chairperson

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the Planning Commission at a regular meeting of said Commission, held at Mendota City Hall on the 15<sup>th</sup> day of December, 2020, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

Celeste Cabrera-Garcia, City Clerk



EXHIBIT "A" TO RESOLUTION NO. PC 20-03  
DEVELOPMENT AGREEMENT FOR APPLICATION NO. 20-24

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
TO:**

City of Mendota  
643 Quine Street  
Mendota, CA 93640  
Attn: City Manager

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SPACE ABOVE THIS LINE FOR RECORDER'S USE  
Recording Fee Exempt per Government Code §6103

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is made and entered into on this \_\_\_\_\_, day of \_\_\_\_\_, 2020, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), and **LEFT MENDOTA I, LLC**, a Delaware limited liability company ("Developer"). City or Developer may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

RECITALS

A. On October 9, 2015, Governor Jerry Brown signed three bills into law (Assembly Bill 266, Assembly Bill 243, and Senate Bill 643) which are collectively referred to as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA establishes a statewide regulatory system for the cultivation, processing, transportation, testing, manufacturing, and distribution of medical marijuana to qualified patients and their primary caregivers.

B. On November 8, 2016, California voters enacted Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act, also known as the Adult Use of Marijuana Act ("AUMA"), which establishes a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the growth and retail sale of cannabis for nonmedical use.

C. On June 27, 2017, Governor Jerry Brown signed into law the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which creates a single regulatory scheme for both medicinal and adult-use cannabis businesses. MAUCRSA retains the provisions in MCRSA and AUMA that granted local jurisdictions control over whether businesses engaged in Commercial Cannabis Activity, as defined in Section 1.4 of this Agreement, may operate in a particular jurisdiction.

D. Developer proposes to improve, develop, and use real property for the operation of Cannabis Businesses that engage in cultivation, manufacturing, distribution, delivery or testing

EXHIBIT "A" TO RESOLUTION NO. PC 20-03  
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of Cannabis and Cannabis Products, as defined in Section 1.4 of this Agreement, in strict accordance with California Cannabis Laws, as defined in Section 1.4 of this Agreement, as they may be amended from time to time, and the Municipal Code of the City of Mendota as it existed on the Effective Date (the "Project"). The Project includes approximately 100,000 square feet of buildings for Commercial Cannabis Activity.

E. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 et seq. (the "Development Agreement Statute"), which authorizes City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.

F. Developer has submitted a request to the City for consideration of a development agreement.

G. Government Code section 65865 requires an applicant for a development agreement to hold a legal or equitable interest in the real property that is the subject of the development agreement. Developer is the fee simple owner or has an equitable interest in the real property located at 1269 Marie Street, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-280-15 (the "Site"), more particularly described in the legal description attached hereto as Exhibit A and the Site Map attached hereto as Exhibit B.

H. On September 12, 2017, the City Council of Mendota ("City Council") adopted Ordinance No. 17-13 establishing zoning limitations and requirements for all cannabis businesses, including the proposed cannabis facility to be located at the Site.

I. Government Code section 65867.5 requires the Planning Commission to hold a public hearing to review an application for a development agreement.

J. On February 27, 2018, the City Council, in a duly noticed and conducted public hearing, and conducted the first reading of proposed Ordinance No. 18-02.

K. Pursuant to Government Code section 65867.5, on March 13, 2018, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 18-02.

K. This Agreement is entered into pursuant to the Development Agreement Statute and the Mendota Municipal Code.

L. City and Developer desire to enter into this Agreement to: (i) facilitate the orderly development of the Site in general and specifically to ensure that such development is consistent with Title 17 of the Mendota Municipal Code; (ii) create a physical environment that is consistent with, complements, and promotes the purposes and intent of the Commercial Cannabis Overlay District and the regulations adopted therewith; (iii) protect natural resources from adverse impacts; and (vi) reduce the economic risk of development of the Site to both City and Developer.

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M. The Parties intend through this Agreement to allow Developer to develop and manage the Project in accordance with the terms of this Agreement.

N. The City Council has determined that this Agreement is consistent with City's General Plan and have conducted all necessary proceedings in accordance with City's Municipal Code for the approval of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

**AGREEMENT**

**ARTICLE 1**

**GENERAL PROVISIONS**

**Section 1.1. Findings.** City hereby finds and determines that entering into this Agreement furthers the public health, safety, and general welfare and is consistent with City's General Plan, including all text and maps in the General Plan.

**Section 1.2. Recitals.** The Recitals above are true and correct and are hereby incorporated into and made a part of this Agreement. In the event of any inconsistency between the Recitals and the provisions of Articles I through 10 of this Agreement, the provisions of Articles I through 10 shall prevail.

**Section 1.3. Exhibits.** The following "Exhibits" are attached to and incorporated into this Agreement:

<u>Designation</u>	<u>Description</u>
Exhibit A	Legal Description
Exhibit B	Site Map
Exhibit C	Notice of Non-performance Penalty
Exhibit D	Notice of Termination
Exhibit E	Assignment and Assumption Agreement

**Section 1.4. Definitions.** In this Agreement, unless the context otherwise requires, the terms below have the following meaning:

- (a) "Additional Insureds" has the meaning set forth in Section 6.1.

EXHIBIT "A" TO RESOLUTION NO. PC 20-03  
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(b) "Additional License" means a state license to operate a cannabis business pursuant to the California Cannabis Laws that is not an Authorized License.

(c) "Adult-Use Cannabis" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended for use by adults 21 years of age or over in California pursuant to the California Cannabis Laws.

(d) "Agreement" means this Development Agreement, inclusive of all Exhibits attached hereto.

(e) "Application" means the application for a development agreement submitted by Developer to the City.

(f) "Assignment and Assumption Agreement" has the meaning set forth in Section 10.1.

(g) "AUMA" means the Adult Use of Marijuana Act (Proposition 64) approved by California voters on November 8, 2016.

(h) "Authorized License" has the meaning set forth in Section 2.3.

(i) "Bureau" means the Bureau of Cannabis Control within the Department of Consumer Affairs, formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation.

(j) "California Building Standards Codes" means the California Building Code, as amended from time to time, in Part 2, Volumes I and 2, as part of Title 24 of the California Code of Regulations, as may be adopted by the Mendota Municipal Code.

(k) "California Cannabis Laws" includes AUMA, MAUCRSA and its implementing regulations, CUA, the Medical Marijuana Program Act of 2004, and any other applicable state laws that may be enacted or approved.

(l) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code. Cannabis and the term "marijuana" may be used interchangeably.

(m) "Cannabis Business" means a cannabis business operating pursuant to an Authorized License.

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(n) "Cannabis Product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

(o) "CEQA" means the California Environmental Quality Act, as set forth in Division 13 (Commencing with Section 21000) of the California Public Resources Code, and the CEQA Guidelines as set forth in Title 14 (Commencing with Section 15000) of the California Code of Regulations.

(p) "City" means the City of Mendota, a municipal corporation having general police powers.

(q) "City Council" means the City of Mendota City Council.

(r) "City Manager" means the City Manager of the City of Mendota, or his or her designee.

(s) "Charged Party" has the meaning set forth in Section 8.1.

(t) "Charging Party" has the meaning set forth in Section 8.1.

(u) "Commercial Cannabis Activity" means to cultivate, manufacture, distribute, process, store, package, label, transport, deliver or test cannabis or cannabis products as provided for by Division 10 (commencing with Section 26000) of the Business and Professions Code.

(v) "Conditional Use Permit" means a conditional use permit for the Project issued by the City pursuant to Mendota Municipal Code Chapter 17.08.050.

(w) "CUA" means the Compassionate Use Act (Proposition 215) approved by California voters on November 5, 1996.

(x) "Developer" means LEFT MENDOTA I, LLC, and as further set forth in Section 6.1.

(y) "Development Agreement Statute" has the meaning set forth in Recital E.

(z) "Exhibits" has the meaning set forth in Section 1.3.

(aa) "Major Amendment" means an amendment that shall have a material effect on the terms of the Agreement. Major Amendments shall require approval by the City Council.

(bb) "Marijuana" has the same meaning as cannabis and those terms may be used interchangeably.

(cc) "MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified as Business and Professions Code section 26000 et seq. and its implementing regulations.

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- (dd) "MCRSA" has the meaning set forth in Recital A.
- (ee) "Ministerial Fee" or "Ministerial Fees" has the meanings set forth in Section 4.1.
- (ff) "Minor Amendment" means a clerical amendment to the Agreement that shall not materially affect the terms of the Agreement (e.g., change of notice address) and any amendment described as minor herein.
- (gg) "Mortgage" has the meaning set forth in Article 7.
- (hh) "Non-Performance Penalty" has the meaning set forth in Section 4.3
- (ii) "Notice of Non-Performance Penalty" has the meaning set forth in Section 4.3.
- (jj) "Notice of Termination" has the meaning set forth in Section 9.1.
- (kk) "Processing Costs" has the meaning set forth in Section 1.11.
- (ll) "Project" has the meaning set forth in Recital D
- (mm) "Project Litigation" has the meaning set forth in Section 10.7.
- (nn) "Public Benefit Fees" has the meaning set forth in Section 4.2.
- (oo) "Public Benefit Amount" has the meaning set forth in Section 4.2.
- (pp) "Site" has the meaning set forth in Recital G.
- (qq) "State Cannabis Manufacturing Regulations" means the regulations related to cannabis manufacturing issued by a State Licensing Authority in accordance with Chapter 13 (commencing with Section 26130) of Division 10 of the Business and Professions Code, which may be amended from time to time.
- (rr) "State Licensing Authority" means the state agency responsible for the issuance, renewal, or reinstatement of a state cannabis license, or the state agency authorized to take disciplinary action against a business licensed under the California Cannabis Laws.
- (ss) "State Taxing Authority" has the meaning set forth in Section 4.2.
- (tt) "Subsequent City Approvals" has the meaning set forth in Section 3.1.
- (uu) "Term" has the meaning described in Section 1.7.

**Section 1.5. Project is a Private Undertaking.** The Parties agree that the Project is a private development and that City has no interest therein, except as authorized in the exercise of its governmental functions. City shall not for any purpose be considered an agent, partner, or joint venturer of Developer or the Project.

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**Section 1.6. Effective Date of Agreement.** This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective and title to the Site is vested in the Developer (the "Effective Date").

**Section 1.7. Term.** The "Term" of this Agreement is thirty (30) years from the Effective Date, unless terminated or extended earlier, as set forth in this Agreement.

(a) **Government Tolling or Termination.** City may provide written notice to Developer to cease all Commercial Cannabis Activity, upon which Developer shall immediately comply, if City is specifically required to comply with federal or state law and such federal or state law requires cessation of Commercial Cannabis Activities. If City temporarily halts this Agreement to comply with federal or state law, this Agreement shall be tolled for an equivalent period of time (the "Tolling Period"). Developer shall not accrue or be liable to City for any Ministerial Fees, Public Benefit Amount, or any other fees contemplated under this Agreement during the Tolling Period. Developer shall resume paying any applicable fees after the Tolling Period ends. City and Developer shall discuss in good faith the termination of this Agreement if the Tolling Period exceeds one (1) calendar year.

(b) **Developer Tolling or Termination.** Developer may not temporarily halt or suspend this Agreement for any purpose without causing a default of this Agreement, except as otherwise allowed by this Agreement.

(c) **Developer Termination.** Developer may provide written notice to City of intent to cease all Commercial Cannabis Activity, if Developer is required, directed, or believes, in its sole and absolute discretion, it must terminate Commercial Cannabis Activity. In such an event, Developer obligations under this Agreement shall terminate. Any resumption of Commercial Cannabis Activity shall be subject to approval by the City Manager. Notwithstanding anything to the contrary herein, temporary termination of Commercial Cannabis Activities to make renovations, repairs, or comply with any applicable laws shall not be considered termination of Commercial Cannabis Activities.

**Section 1.8. Priority of Enactment.** In the event of conflict between the various land use documents referenced in this Agreement, the Parties agree that the following sequence of approvals establishes the relative priority of the approvals, each approval superior to the approvals listed thereafter: (a) General Plan, (b) Agreement, (d) Conditional Use Permit, and (e) Subsequent City Approvals, as defined in Section 3.1 of this Agreement.

**Section 1.9. Amendment of Agreement.** This Agreement shall be amended only by mutual consent of the Parties. All amendments shall be in writing. The City Council hereby expressly authorizes the City Manager to approve a Minor Amendment to this Agreement, upon notification of the City Council. A Major Amendment to this Agreement shall be approved by the City Council. The City Manager shall, on behalf of City, have sole discretion for City to determine if an amendment is a Minor Amendment or a Major Amendment. Nothing in this Agreement shall be construed as requiring a noticed public hearing, unless required by law.

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**Section 1.10. Recordation of Development Agreement.** The City Clerk shall cause a copy of this Agreement to be recorded against the title of the Site within ten (10) business days of the Effective Date.

**Section 1.11. Funding Agreement for Processing Costs.** Developer has deposited Seven Thousand Five Hundred Dollars (\$7,500) with City to pay for the Application, all actual, reasonable fees and expenses incurred by City that are related to the preparation, processing and annual review of this Agreement, including recording fees, publishing fees, staff time, consultant and reasonable attorney fees and costs (collectively, "Processing Costs"). The Processing Costs are refundable solely to the extent of non-expended Processing Costs. Developer shall be entitled to a refund of available Processing Costs only after City determines all financial obligations associated with the Project have been received and paid by City.

(a) **Apportionment of Processing Costs.** If the amount deposited for purposes of Processing Costs is insufficient to cover all Processing Costs, City shall provide notice to Developer, and Developer shall deposit with City such additional funds necessary to pay for all Processing Costs within thirty (30) calendar days. The failure to timely pay any such additional amounts requested by City shall be considered a material default of this Agreement and City may immediately terminate this Agreement.

(b) **Accounting.** Developer may request, and City shall issue within a reasonable time, an accounting and written acknowledgement of Processing Costs paid to City.

**ARTICLE 2  
DEVELOPMENT OF PROPERTY**

**Section 2.1. Vested Right of Developer.** During the Term, in developing the Site consistent with the Project described herein, Developer is assured that the development rights, obligation terms, and conditions specified in this Agreement, including, without limitation, the terms, conditions, and limitations set forth in the Exhibits, are fully vested in Developer and may not be modified or terminated by City except as set forth in this Agreement or with Developer's written consent.

**Section 2.2. Vested Right to Develop.** In accordance with Section 2.1, Developer shall have the vested right to develop and use the Project consistent with this Agreement, the existing City regulations and codes, the Conditional Use Permit, and Subsequent City Approvals.

**Section 2.3. Permitted Uses and Development Standards.** Developer shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license types and uses associated with said license types (the "Authorized License"):

License Description	State License Type(s)
Cultivation Indoor	1A/2A/3A/5A
Cultivation Mixed Light	1B/2B/3B/5B
Cultivation	Processor
Cultivation Nursery	4



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Manufacturing 1	6
Manufacturing 2	7
Laboratory Testing	8
Distribution	11
Non-storefront Retailer	9

Developer or its tenants or assignees shall be permitted to use the Site consistent with the Authorized License types for the Term of this Agreement and during the time Developer or its tenants or assignees is applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer or each of its tenants or assignees is required to apply for and obtain an Authorized License from the applicable State Licensing Authority. If the State Licensing Authority does not grant the Authorized License to Developer or its tenants or assignees, Developer or the tenant or assignee that was denied a license shall immediately cease Commercial Cannabis Activity on the Site. Developer or its tenants or assignees shall also, within ten (10) calendar days of receiving notice from the State Licensing Authority relating to a denial or rejection of a license, notify City of the State Licensing Authority's denial or rejection of any license. If the Authorized License is not granted by the State Licensing Authority, Developer or its tenants or assignees shall immediately cease operations. In this situation, this Agreement shall terminate immediately. For the purposes of clarification, a denial or rejection of Developer's tenants or assignee's Authorized License shall not result in the termination of this agreement provided (x) other Authorized Licenses have been issued to Developer, its tenants or assignees; or (y) Developer or its tenants or assignees are in the process of applying for an Authorized License. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and Project.

**Section 2.4. Major Amendment to Permitted Uses.** Developer may request to add to the Authorized License one or more of the license types then authorized by the California Cannabis Laws. If City Council allows any additional Authorized Licenses (“**Additional Licenses**”), City Council shall make a finding of whether Developer's or its tenants' or assignees' Additional Licenses will have any additional impact on City neighborhoods, infrastructure, or services. Developer shall be required to compensate City for all additional impacts on City infrastructure or services associated with any Additional Licenses and the Public Benefit Amount shall be revised as mutually agreed by the Parties. This process shall be a Major Amendment to this Agreement.

**Section 2.5. Development Permit.** Prior to commencing operation of any Commercial Cannabis Activity on the Site, Developer shall obtain a Conditional Use Permit and any applicable Subsequent City Approvals. Developer shall be required to comply with all provisions of the Mendota Municipal Code and any other City rules and administrative guidelines associated with implementation of the Commercial Cannabis Overlay District. Nothing in this Agreement shall be construed as limiting the ability of City to amend the Mendota Municipal Code or issue rules or administrative guidelines associated with implementation of the Commercial Cannabis Overlay District or Developer's obligation to strictly comply with the same.

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**Section 2.6. Subsequent Entitlements, Approvals, and Permits.** Successful implementation of the Project shall require Developer to obtain additional approvals and permits from City and other local and state agencies. City shall comply with CEQA in the administration of all Subsequent City Approvals. In acting upon any Subsequent City Approvals, City's exercise of discretion and permit authority shall conform to this Agreement. Notwithstanding the foregoing, in the course of taking action on the Subsequent City Approvals, City will exercise discretion in adopting mitigation measures as part of the Conditional Use Permit. The exercise of this discretion is not prohibited by this Agreement, but the exercise of that discretion must be reasonable and consistent with this Agreement. Nothing in this Agreement shall preclude the evaluation of impacts or consideration of mitigation measures or alternatives, as required by CEQA.

**Section 2.7. Initiatives and Referenda.** If any City ordinance, rule or regulation, or addition to the Mendota Municipal Code is enacted or imposed by a citizen-sponsored initiative or referendum after the Effective Date that would conflict with this Agreement, an associated Conditional Use Permit, Subsequent City Approvals, or reduce the development rights or assurances provided to Developer in this Agreement, such Mendota Municipal Code changes shall not be applied to the Site or Project and this Agreement shall remain in full force and effect; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. City shall cooperate with Developer and shall undertake such reasonable actions as may be appropriate to ensure this Agreement remains in full force and effect and is implemented in accordance with its terms to the fullest extent permitted by state or federal law.

**Section 2.8. Regulation by Other Government Entities.** Developer acknowledges that City does not have authority or jurisdiction over any other government entities' ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may negatively affect the Project or the ability of City to issue a permit to Developer or comply with the terms of this Agreement. Any moratorium imposed by another government entity, including the State Licensing Authority, on City shall not cause City to be in breach of this Agreement.

**Section 2.9. Developer's Right to Rebuild.** Developer may renovate portions of the Site any time within the Term of this Agreement consistent with the Mendota Municipal Code. Any such renovation or rebuild shall be subject to all design, building code, and other requirements imposed on the Project by this Agreement.

**Section 2.10. Changes in California Building Standards Codes.** Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time to the California Building Standards Codes.

**Section 2.11. Changes Mandated by Federal or State Law.** The Site and Project shall be subject to subsequently enacted state or federal laws or regulations that may preempt the Mendota Municipal Code, or mandate the adoption or amendment of local regulations, or are in conflict with this Agreement or local rules or guidelines associated with the Commercial Cannabis Overlay District. As provided in Section 65869.5 of the Development Agreement Statute, in the event state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be

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modified or suspended as may be necessary to comply with such state or federal laws or regulations. Upon discovery of a subsequently enacted federal or state law meeting the requirements of this Section, City or Developer shall provide the other Party with written notice of the state or federal law or regulation, and a written statement of the conflicts thereby raised with the provisions of the Mendota Municipal Code or this Agreement. Promptly thereafter, City and Developer shall meet and confer in good faith in a reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation provided City shall not be obligated to agree to any modification materially increasing its obligations or materially adversely affecting its rights and benefits hereunder. In such discussions, City and Developer will attempt to preserve the terms of this Agreement and the rights of Developer derived from this Agreement to the maximum feasible extent while resolving the conflict. If City, in its judgment, determines it necessary to modify this Agreement to address such conflict, City shall have the right and responsibility to do so, and shall not have any liability to Developer for doing so or be considered in breach or default of this Agreement. City also agrees to process, in accordance with the provisions of this Agreement, Developer's proposed changes to the Project that are necessary to comply with such federal or state law and that such proposed changes shall be conclusively deemed to be consistent with this Agreement without further need for any amendment to this Agreement.

**Section 2.12. Health and Safety Emergencies.** In the event that any future public health and safety emergencies arise with respect to the development contemplated by this Agreement, City agrees that it shall attempt, if reasonably possible as determined by City in its discretion, to address such emergency in a way that does not have a material adverse impact on the Project. If City determines, in its discretion, that it is not reasonably possible to so address such health and safety emergency, to select that option for addressing the situation which, in City's discretion, minimizes, so far as reasonably possible, the impact on development and use of the Project in accordance with this Agreement, while still addressing such health and safety emergency in a manner acceptable to City.

**ARTICLE 3**

**ENTITLEMENT AND PERMIT PROCESSING, INSPECTIONS**

**Section 3.1. Subsequent City Approvals.** City shall permit the development, construction, and conditionally permitted use contemplated in this Agreement. City agrees to timely grant, pursuant to the terms of this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and any Subsequent City Approvals reasonably necessary to complete the goals, objectives, policies, standards, and plans described in this Agreement. The Subsequent City Approvals shall include any applications, permits, and approvals required to complete the improvements necessary to develop the Site, in general accordance with this Agreement ("Subsequent City Approvals"). Nothing herein shall require City to provide Developer with Subsequent City Approvals prior to, or without complying with, all of the requirements in this Agreement, the Mendota Municipal Code as it existed on the Effective Date, and any applicable state law.

**Section 3.2. Timely Processing.** City shall use its reasonable best efforts to process and approve, within a reasonable time, any Subsequent City Approvals or environmental review requested by Developer during the Term of this Agreement.

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**Section 3.3. Cooperation between City and Developer.** Consistent with the terms set forth herein, City agrees to cooperate with Developer, on a timely basis, in securing all permits or licenses that may be required by City or any other government entity with permitting or licensing jurisdiction over the Project.

**Section 3.4. Further Consistent Discretionary Actions.** The exercise of City's authority and independent judgment is recognized under this Agreement, and nothing in this Agreement shall be interpreted as limiting City's discretion or obligation to hold legally required public hearings. Except as otherwise set forth herein, such discretion and action taken by City shall, however, be consistent with the terms of this Agreement and not prevent, hinder or compromise development or use of the Site as contemplated by the Parties in this Agreement.

**ARTICLE 4**

**PUBLIC BENEFIT, PROCESSING, AND OVERSIGHT**

**Section 4.1. Processing Fees and Charges.** Developer shall pay to City those processing, inspection, plan checking, and monitoring fees and charges required by City which are in force and effect at the time those fees and charges are incurred (including any post-Effective Date increases in such fees and charges) for processing applications and requests for building permits, inspections, other permits, approvals and actions, and monitoring compliance with any permits issued or approvals granted or the performance of any conditions (each a "Ministerial Fee" and collectively, the "Ministerial Fees").

**Section 4.2. Public Benefit.**

(a) The Parties acknowledge and agree that this Agreement confers substantial private benefit upon Developer that will place burdens upon City infrastructure, services, and neighborhoods. Accordingly, the Parties intend to provide consideration to City to offset these impacts that is commensurate with the private benefits conferred on Developer (the "Public Benefit Fees"). Developer acknowledges that the Public Benefit Fees provided for herein are greater than the annual fee provided for in Mendota Municipal Code section 17.99.070 and, despite this fact, voluntarily agrees to pay the fees acknowledging that the private benefits conferred are of equal or greater consideration to the fees, and waives any right to challenge said fees as a violation of any law. In consideration of the foregoing, Developer shall remit to City the following payments (collectively referred to as the "Public Benefit Amounts"):

(i) An annual payment of Eighty-Five Thousand Dollars (\$85,000) for each Non-Storefront Retailer Authorized License actively operating on the Site ("Non-Storefront Payment"), that shall be paid on the last business day of each year; and

(ii) An annual payment of Two Hundred and Ten Thousand Dollars (\$210,000) paid in equal payments of Fifty-Two Thousand Five Hundred Dollars (\$52,500) on the First (1<sup>st</sup>) business day of every Third (3<sup>rd</sup>) month ("Quarterly Payment"); and

(iii) \$8.00 per square foot (the "Square Foot Charge") of the existing buildings on the premises allocated for Authorized Licenses, which are occupied by tenants and such tenants are actually engaging in indoor cultivation, manufacturing, or distribution of cannabis or cannabis products *less* any Quarterly Payments that have been tendered to the City during the applicable

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period. The Square Foot Charge shall be paid to the City on the First (1<sup>st</sup>) Business Day of every 6<sup>th</sup> month throughout the Term. For purposes of clarification, the Square Foot Charge shall only become due as to that portion of the Site where the Developer or its tenants or assignees are actively engaging in Commercial Cannabis Activities, and with respect to indoor cultivation, the actual canopy space where indoor cultivation occurs. In the event the Developer or its tenants or assignees are not actively engaging in Commercial Cannabis Activities on the Site, the City shall only receive the Quarterly Payment. In the event the Developer or any of its tenants or assignees are actively engaging in Commercial Cannabis Activities on the Site, the Square Foot Charge shall be reduced by any Quarterly Payments already paid to the City; and

(iv) Fifty cents (\$0.50) per square foot of the canopy space in any structure used for mixed light cultivation type of Authorized Licenses, which are occupied by tenants and such tenants are actually engaging in mixed-light cultivation of cannabis ("Greenhouse Payment"). The Greenhouse Payment shall be paid to the City on the First (1<sup>st</sup>) Business Day of every 3<sup>rd</sup> month of the Term. For the purposes of this Section, the Greenhouse Payment shall mean the actual amount of canopy (measured by the aggregate area of vegetative growth of live cannabis plants on the premises).

(b) Developer shall remit the Non-Storefront Payment, Quarterly Payment, Square Foot Charge and Greenhouse Payment, as applicable, to City on as described in subdivision (a) of this section. Failure to remit the Quarterly Payment, Non-Storefront Payment, and Square Foot Charge, and Greenhouse Payment as applicable, is a material breach of this Agreement.

(c) The Square Foot Charge referred to in subdivision (a) of this section shall be subject to a five percent (5%) increase at the commencement of the tenth (10<sup>th</sup>) year of the term ("First Adjustment Date"), the twentieth (20<sup>th</sup>) year of the Term ("Second Adjustment Date"), and the thirtieth (30<sup>th</sup>) year of the Term (the "Third Adjustment Date"). The Parties hereby agree that there shall be no further increases to the Square Foot Charge after the Third Adjustment Date for the remainder of the Term.

(d) Notification. At least thirty (30) days before the adjustment of the Square Foot Charge as provided in subdivision (c) of Section 4.2 of this Agreement, City shall notify Developer in writing of the amount of the new Square Foot Charge in effect until the next adjustment date. The City's failure to provide Developer with advance notice of an increased Square Foot Charge prior to an adjustment date shall not be deemed a waiver of the City's right and entitlement to receive said increased Square Foot Charge owed by Developer in any way.

**Section 4.3. Reporting.** Developer shall provide City with copies of Authorized Licenses issued by a State Licensing Authority to Developer and its tenants within forty-five (45) calendar days of issuance of such license to a tenant and each annual renewal thereafter ("**State Licenses**"). Developer shall also provide City with a list of tenants that have received a rent credit for employing at least fifty percent (50%) of City residents in accordance with Section 4.8 of this Agreement within thirty (30) calendar days of each anniversary of the Effective Date of this Agreement ("**Local Workforce Report**"). Failure or refusal of Developer to pay the Public Benefit Amount shall constitute full and sufficient grounds for the revocation or suspension of the Conditional Use Permit. Notwithstanding anything to the contrary herein, failure to provide copies of State Licenses or Local Workforce Report within the applicable time period shall not

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amount to a material default of this Agreement and shall not constitute grounds for the revocation or suspension of the Conditional Use Permit.

**Section 4.4. Records.** Subsequent tenants or assignees shall keep records of all Commercial Cannabis Activity in accordance with Chapter 16 (commencing with Section 26160) of Division 10 of the Business and Professions Code. All records required by this Article 4 shall be maintained and made available for City's examination and duplication (physical or electronic) upon the City Manager's request at the Site or at an alternate facility as approved in writing by the City Manager or his or her designee. Upon request, Developer shall make all records relating to this Article 4 available to City within three (3) business days.

**Section 4.5. Penalty.** Developer acknowledges that to ensure proper compliance with the terms of this Agreement and any applicable laws, City must engage in costly compliance review, inspections, and, if necessary, enforcement actions to protect the health, safety, and welfare of its residents. Penalty and interest provisions are necessary to assist City in compliance review and enforcement actions. If Developer fails to make any payment when due as required by this Agreement, including the Public Benefit Amount, and fails to cure such failure within the allotted Cure Period, Extended Cure Period, or any extension thereof mutually agreed upon by the Parties in writing, the City may impose a "Non-Performance Penalty." A Non-Performance Penalty of one percent (1%) shall be applied to all past due payments. City shall deliver to Developer a "Notice of Non-Performance Penalty," attached hereto as Exhibit C. Payment of the Non-Performance Penalty shall be in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Penalty.

**Section 4.6. Interest on Unpaid Non-Performance Penalty.** If Developer fails to pay the Non-Performance Penalty after City has delivered the Notice of Non-Performance Penalty, then, in addition to the principal amount of the Non-Performance Penalty, Developer shall pay City interest at the rate of eighteen percent (18%) per annum, computed on the principal amount of the Non-Performance Penalty, from a date fifteen (15) calendar days following delivery of the Notice of Non-Performance Penalty.

**Section 4.7. Exempt from City Tax.** For the Term of this Agreement, Developer shall be exempt from any City tax on commercial cannabis businesses. Notwithstanding the foregoing, Developer and Project shall be subject to any and all taxes, assessments, or similar charges or fees of general applicability enacted by the federal government, state government, or County of Fresno, including any tax applicable to an area greater than the City limits to which City may be a party (i.e., county tax sharing agreement). In the event that the City applies a new tax on commercial cannabis businesses, the City shall refund or credit the amount owed as Public Benefit Amount by an equal amount up to the amount of Public Benefit Amount owed to the Developer and any assuming owner proportional to the percentage ownership share of the gross land area of the Site. For the purposes of clarification, other than the Public Benefit Amount, the Processing Fees, and any other fees contemplated pursuant to this Agreement, Developer shall be exempt from any and all City taxes and fees relating to commercial cannabis activity and commercial cannabis businesses passed following the execution of this Agreement.

**Section 4.8. Employing City Residents.** Developer agrees to use its best efforts to promote the hiring and employment of local City residents to construct, if necessary, operate the business(es)

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within the Project, and provide maintenance and security services to the Project, provided Developer has control over such hiring and employment. As part of such efforts, Developer agrees to include in any lease, license or other conveyance of any right to use the Project such language that any transferee of such interest shall use its best efforts to hire and employ local City residents for its business. Developer further agrees to provide a four percent (4%) base rent credit to any tenant whose workforce consists of at least fifty percent (50%) of local City residents at the end of each fiscal year for the period the tenant's workforce meets the criteria set forth herein.

**Section 4.9. Manner of Payment.** All payments required to be made to City pursuant to this Agreement shall be paid by Developer via check, ACH payment, or wire transfer through a bank licensed and in good standing with all appropriate regulatory bodies. No payment required pursuant to this Agreement may be made in cash. Developer understands and agrees that any failure to comply with this Section 4.9 shall constitute a material breach of this Agreement.

**Section 4.10. Charitable Donation.** Upon the full execution of this Agreement, Developer shall make a one-time donation in the amount of Ten Thousand Dollars (\$10,000) to a charity or program focused on drug education or rehabilitation as selected by the City.

**Section 4.11. Site Beautification.** Upon the full execution of this Agreement, Developer shall spend up to Ten Thousand Dollars (\$10,000) to clean up the vacant land portions of the Site and building facades. Developer agrees to use its best efforts to promote the hiring and employment of local City residents to complete this work.

**ARTICLE 5**

**PUBLIC FACILITIES, SERVICES, AND UTILITIES**

City shall use the Public Benefit Amount to pay for the impact on and maintenance or improvement of City neighborhoods, for the general welfare of the residents of Mendota, and the existing level of service of City infrastructure and services to accommodate for the Project.

**ARTICLE 6**

**INSURANCE AND INDEMNITY**

**Section 6.1. Insurance.** Developer shall require all persons doing work on the Project, including its contractors and subcontractors (collectively, "Developer" for purposes of this Article 6 only), to obtain and maintain insurance of the -types and in the amounts described in this Article with carriers reasonably satisfactory to City.

(a) **General Liability Insurance.** Developer shall maintain commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) (or as otherwise approved, in writing, by City) per claim and Two Million Dollars (\$2,000,000) each occurrence. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as "Additional Insureds" by endorsement with

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respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed additional insured.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(b) **Automotive Liability Insurance.** Developer shall maintain business, automobile liability insurance or equivalent form with a limit of not less than One Million Dollars (\$1,000,000) for each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles. Such insurance shall also:

(i) Name City, its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives as Additional Insureds by endorsement with respect to performance of this Agreement. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed Additional Insureds.

(ii) Be primary with respect to any insurance or self-insurance programs covering City, its officials, employees, agents, and representatives.

(iii) Contain standard separation of insured provisions.

(c) **Workers' Compensation Insurance.** Developer shall take out and maintain during the Term of this Agreement, workers' compensation insurance for all of Developer's employees employed at or on the Project, and in the case any of the work is subcontracted, Developer shall require any general contractor or subcontractor similarly to provide workers' compensation insurance for such contractor's or subcontractor's employees, unless such employees are covered by the protection afforded by Developer. In case any class of employee engaged in work on the Project is not protected under any workers' compensation law, Developer shall provide and shall cause each contractor and subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Developer hereby indemnifies City for any damage resulting from failure of Developer, its agents, employees, contractors, or subcontractors to take out or maintain such insurance. Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident shall be maintained.

**Section 6.2. Other Insurance Requirements.** Developer shall do all of the following:

(a) Prior to taking any actions under this Agreement, furnish City with properly executed certificates of insurance that clearly evidence all insurance required in this Article, including evidence that such insurance will not be canceled, allowed to expire, or be materially reduced in coverage without thirty (30) days prior written notice to City. Provide to City, upon request, and within seven (7) calendar days of said request, certified copies of endorsements and policies, and properly executed certificates of insurance evidencing the insurance required herein.



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(b) Replace or require the replacement of certificates, policies, and endorsements for any insurance required herein expiring prior the termination of this Agreement.

(c) Maintain all insurance required herein from the Effective Date of this Agreement to the earlier of the expiration of the Term or the mutual written termination of this Agreement.

(d) Place all insurance required herein with insurers licensed to do business in California with a current Best's Key Rating Guide reasonably acceptable to City.

**Section 6.3. Indemnity.** To the fullest extent permitted by law, Developer shall defend, indemnify, and hold harmless City and its agents, elected and appointed officials, officers, employees, consultants, and volunteers (collectively, "City's Agents") from any and all liability arising out of a claim, action, or proceeding against City, or City's Agents, to attack, set aside, void, or annul an approval concerning the Project, this Agreement, any applicable Conditional Use Permit, or Subsequent City Approvals.

Upon receiving notice of a claim, action, or proceeding, Developer shall assume the defense of the claim, action, or proceeding and the payment of all attorneys' fees and costs, incurred in good faith and in the exercise of reasonable discretion, of City's counsel in defending such an action prior to Developer's assumption of such defense. In the event City elects to contract with outside counsel, to provide for such a defense, City shall meet and confer with Developer regarding the selection of counsel, and Developer shall pay all costs related to retention of such counsel. City shall have the absolute and sole authority to control the litigation and make litigation decisions, including, but not limited to, approving counsel to defend City and settlement or other disposition of the matter, provided the City shall not reject any reasonable good faith settlement. If City does reject a reasonable, good faith settlement that is acceptable to Developer, Developer may enter into a settlement of the action, as it relates to Developer, and City shall thereafter defend such action (including appeals) at its own cost and be solely responsible for any judgment rendered in connection with such action. This Section 6.3 applies exclusively to settlements pertaining to monetary damages or damages which are remedial by the payment of monetary compensation. The City's remedies are limited to that portion of the Project that is in breach of this Section 6.3.

**Section 6.4. Failure to Indemnify; Waiver.** Failure to indemnify City, when required by this Agreement and upon receiving proper notice, shall constitute a material breach of this Agreement and of any applicable Conditional Use Permit and Subsequent City Approvals, which shall entitle City to all remedies available under law, including, but not limited to, specific performance and damages. Failure to indemnify shall constitute grounds upon which City may rescind its approval of any applicable Conditional Use Permit. Developer's failure to indemnify City shall be a waiver by Developer of any right to proceed with the Project, or any portion thereof, and a waiver of Developer's right to file a claim, action or proceeding against City or City's Agents based on City's rescission or revocation of any Conditional Use Permit, Subsequent City Approvals, or City's failure to defend any claim, action, or proceeding based on Developer's failure to indemnify City.

**Section 6.5. Waiver of Damages.** Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge that City would not have entered into this Agreement had it been

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exposed to liability for damages from Developer and, therefore, Developer hereby waives all claims for damages against City for breach of this Agreement. Developer further acknowledges that under the Development Agreement Statute, land use approvals (including development agreements) must be approved by the City Council and that, under law, the City Council's discretion to vote in any particular way may not be constrained by contract. Developer therefore waives all claims for damages against City in the event that this Agreement or any Project approval is: (1) not approved by the City Council or (2) is approved by the City Council, but with new changes, amendments, conditions, or deletions to which Developer is opposed. Developer further acknowledges that, as an instrument which must be approved by ordinance, a development agreement is subject to referendum; and that, under law, the City Council's discretion to avoid a referendum by rescinding its approval of the underlying ordinance may not be constrained by contract, and Developer waives all claims for damages against City in this regard. Notwithstanding the foregoing, nothing in this Section 6.5 shall amount to a waiver of Developer's right to exercise any of the administrative remedies available to Developer under applicable law and pursue any and all equitable remedies against the City in the event of the City's breach of this Agreement, including without limitation exercising its right to appeal, filing a Writ of Mandamus, or seeking specific performance.

**ARTICLE 7**

**MORTGAGEE PROTECTION**

This Agreement, once executed and recorded, shall be superior and senior to any lien placed upon the Site or any portion thereof following recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. This Agreement shall immediately be deemed in default and immediately terminate upon the foreclosure or transfer of any interest in the Site or Project, provided such foreclosure or the transfer of interest results in the change of Developer, whether by operation of law or any other method of interest change or transfer, unless the City Manager has authorized such change or transfer in advance, in writing, which authorization shall not be unreasonably withheld.

**ARTICLE 8**

**DEFAULT**

**Section 8.1. General Provisions.**

(a) Subject only to any extensions of time by mutual consent in writing, or as otherwise provided herein, the failure or delay by any Party to perform in accordance with the terms and provisions of this Agreement shall constitute a default. Subject to Section 8.1(g), any Party alleging a default or breach of this Agreement ("Charging Party") shall give the other Party ("Charged Party") not less than thirty (30) calendar days written notice, which shall specify the nature of the alleged default and the manner in which the default may be cured ("Cure Period"). During any such Cure Period, the Charged Party shall not be considered in default for purposes of termination of this Agreement or institution of legal proceedings for the breach of this Agreement.

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(b) After expiration of the t Cure Period, if such default has not been cured or is not in the process of being diligently cured in the manner set forth in the notice, or if the breach cannot reasonably be cured within thirty (30) calendar days, the Charging Party may, at its option, institute legal proceedings pursuant to this Agreement or give notice of its intent to terminate this Agreement pursuant to Government Code section 65868. In the event City is the Charging Party, City may, in its sole discretion, give notice, as required by law, to the Charged Party of its intent to revoke or rescind any operable Conditional Use Permit related to or concerning the Project.

(c) Prior to the Charging Party giving notice to the Charged Party of its intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review by City in the manner set forth in Government Code sections 65865, 65867, and 65868 or the comparable provisions of the Mendota Municipal Code within thirty (30) calendar days from the expiration of the Cure Period.

(d) Following consideration of the evidence presented and said review before City, and after providing the Charged Party an additional thirty (30) calendar day period to cure, the Charging Party may institute legal proceedings against the Charged Party or may give written notice of termination of this Agreement to the Charged Party.

(e) Evidence of default may arise in the course of a regularly scheduled periodic review of this Agreement pursuant to Government Code section 65865.1, as set forth in Section 8.2. If any Party determines that another Party is in default following the completion of the normally scheduled periodic review, without reference to the procedures specified in Section 8.1(c), said Party may give written notice of termination of this Agreement, specifying in the notice the alleged nature of the default and potential actions to cure said default where appropriate. If the alleged default is not cured in sixty (60) calendar days or within such longer period specified in the notice, or the defaulting Party is not diligently pursuing a cure, or if the breach cannot reasonably be cured within the period or the defaulting party waives its right to cure such alleged default, this Agreement may be terminated by the non-defaulting Party by giving written notice.

(f) In the event Developer is in material default under the terms and conditions of this Agreement, no permit application shall be accepted by City nor will any permit be issued to Developer until the default is cured, or the Agreement is terminated.

(g) In the event that a person or entity other than the Developer is in default, the Developer shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide the Developer with notice and opportunity to cure as provided for in paragraph (a) through (e) above, except that the time periods in paragraphs (a), (b), (c) and (e) shall be ninety (90) days ("Extended Cure Period").

**Section 8.2. Annual Review.** City shall, every twelve (12) months during the Term of this Agreement, review the extent of good faith, substantial compliance of Developer and City with the terms of this Agreement. Such periodic review by City shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. City shall deposit in the mail or email to Developer a copy of all staff reports and, to the extent practical, related exhibits concerning this Agreement or the Project's performance, at least seven (7) calendar days prior to such annual review. Developer shall be entitled to appeal a

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determination of City or City Manager to the City Council. Any appeal must be filed within ten (10) calendar days of the Developer's receipt of the written decision of City or the City Manager, respectively. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before City, the City Manager, or City Council, as applicable.

**Section 8.3. Estoppel Certificates.** City shall, with at least twenty (20) calendar days prior written notice, execute, acknowledge, and deliver to Developer, Developer' lender, potential investors, or assignees an Estoppel Certificate in writing which certifies that this Agreement is in full force and effect, that there are no breaches or defaults under the Agreement, and that the Agreement has not been modified or terminated and is enforceable in accordance with its terms and conditions.

(a) At Developer's option, City's failure to deliver such Estoppel Certificate within the stated time period shall be conclusive evidence that the Agreement is in full force and effect, that there are no uncured breaches or defaults in Developer's performance of the Agreement or violation of any City ordinances, regulations, and policies regulating the use and development of the Site or the Project subject to this Agreement.

**Section 8.4. Default by City.** In the event City does not accept, review, approve, or issue any permits or approvals in a timely fashion, as defined by this Agreement, or if City otherwise defaults under the terms of this Agreement, City agrees that Developer shall not be obligated to proceed with or complete the Project, and shall constitute grounds for termination or cancellation of this Agreement by Developer.

**Section 8.5. Cumulative Remedies of Parties.** In addition to any other rights or remedies, City or Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, enforce any covenant, or enjoin any threatened or attempted violation of the provisions of this Agreement, so long as any such action conforms to section 8.1 (c) of this Agreement.

**Section 8.6. Enforced Delay, Extension of Times of Performance.** Delays in performance, by either Party, shall not be deemed a default if such delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed where mandated by governmental entities other than City including in the event of a pandemic, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations enacted by the state or federal government, litigation, or other force majeure events. An extension of time for such cause shall be in effect for the period of forced delay or longer, as may be mutually agreed upon.

**ARTICLE 9**

**TERMINATION**

**Section 9.1. Termination Upon Completion of Development.** This Agreement shall terminate upon the expiration of the Term, unless it is terminated earlier pursuant to the terms of this Agreement. Upon termination of this Agreement, City shall record a notice of such termination in substantial conformance with the "Notice of Termination" attached hereto as Exhibit D, and this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

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**Section 9.2. Effect of Termination on Developer' Obligations.** Termination of this Agreement shall eliminate any further obligation of Developer to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement, in whole or in part, shall not, however, eliminate the rights of Developer to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

**Section 9.3. Effect of Termination on City's Obligations.** Termination of this Agreement shall eliminate any further obligation of City to comply with this Agreement, or some portion thereof, if such termination relates to only part of the Site or Project. Termination of this Agreement shall not, however, eliminate the rights of City to seek any applicable and available remedies or damages based upon acts or omissions occurring before termination.

**Section 9.4. Survival After Termination.** The rights and obligations of the Parties set forth in this Section 9.4, Section 2.8, Section 6.3, Section 10.3, Section 10.4, Section 10.5, Section 10.7, and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination of this Agreement, will survive any such termination.

**ARTICLE 10**

**OTHER GENERAL PROVISIONS**

**Section 10.1. Assignment and Assumption.** Developer shall not have the right to sell, assign, or transfer all or any part of its rights, title, and interests in all or a portion of Site, or Project, subject to or a part of this Agreement, to any person, firm, corporation, or entity during the Term of this Agreement without the advance written consent of the City Manager, such consent shall not be unreasonably withheld or conditioned. Any assignment or transfer prohibited by this Agreement will be considered an immediate breach of this Agreement and City may elect to immediately terminate this Agreement as it applies to the assumed property. If the City Manager approves an assignment or transfer of any interest detailed in this Section 10.1, City and Developer shall execute an "Assignment and Assumption Agreement" in the form attached hereto as Exhibit E. Nothing in this Section 10.1 applies to the Developer's capitalization or ownership provisions.

**Section 10.2. Covenants Running with the Land.** All of the provisions contained in this Agreement shall be binding upon the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of interest in the Site or Project, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including California Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Site, and is binding upon Developer.

**Section 10.3. Notices.** Any notice or communication required hereunder between City and Developer must be in writing, and may be given either personally, by facsimile or email (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt

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requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile or email transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile or email after 5:00 p.m. on a normal business day, or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and 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 given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered, as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to City:                   City of Mendota  
643 Quince Street  
Mendota, CA 93640  
Attention: City Manager

And to:                       Wanger Jones Helsley PC  
265 E. River Park Circle, Suite 310  
Fresno, California 93720  
Attention: John P. Kinsey, Esq.

If to Developer:       Left Mendota I, LLC  
1315 N North Branch St, Suite D  
Chicago, IL 60642  
Attention: Chris Lefkowitz

And to:                       Katchko Vitiello & Karikomi, PC  
11835 W Olympic Blvd 860E  
Los Angeles, California 90064  
Attention: Yelena Katchko, Esq.

**Section 10.4. Governing Law and Binding Arbitration.** The validity, interpretation, and performance of this Agreement shall be controlled by and construed pursuant to the laws of the State of California. Any dispute, claim, or controversy arising out of or relating to this

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Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration in Fresno, California, before one arbitrator. The arbitration shall proceed pursuant to the Comprehensive Arbitration Rules and Proceedings (“Rules”) of the Judicial Arbitration and Mediation Services (“JAMS”). If the Parties cannot agree on an arbitrator within 30 days of the first notice by either Party of the need for arbitration, the arbitrator shall be chosen in accordance with the then current Rules of JAMS. The arbitrator shall apply California substantive law and shall have the power to enforce the rights, remedies, duties, liabilities and obligations of discovery by the imposition of the same terms, conditions and penalties as can be imposed in like circumstances in a civil action by a court of competent jurisdiction of the State of California. The arbitrator shall have the power to grant all legal and equitable remedies provided by California law and award compensatory damages provided by California law, except that punitive damages shall not be awarded. The arbitration award shall be final and binding upon the Parties and may be enforced through an action thereon brought in the Superior Court for the State of California in Los Angeles County.

**Section 10.5. Invalidity of Agreement/Severability.** If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If -any term or provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any term or provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, any provisions that are not invalid or unenforceable shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement. The Parties expressly agree that each Party is strictly prohibited from failing to perform any and all obligations under this Agreement on the basis that this Agreement is invalid, unenforceable, or illegal. By entering into this Agreement, each Party disclaims any right to tender an affirmative defense in any arbitration or court of competent jurisdiction, that performance under this Agreement is not required because the Agreement is invalid, unenforceable, or illegal.

**Section 10.6. Cumulative Remedies.** In addition to any other rights or remedies, City and Developer may institute legal or equitable proceedings to cure, correct, or remedy any default, to specifically enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of the provisions of this Agreement. The prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs. Notwithstanding the foregoing or any other provision of this Agreement, in the event of City default under this Agreement, Developer agrees that Developer may not seek, and shall forever waive any right to, monetary damages against City, but excluding therefrom the right to recover any fees or charges paid by Developer in excess of those permitted hereunder.

**Section 10.7. Third Party Legal Challenge.** In the event any legal action or special proceeding is commenced by any person or entity challenging this Agreement or any associated entitlement, permit, or approval granted by City to Developer for the Project (collectively, "Project Litigation"), the Parties agree to cooperate with each other as set forth herein. City may elect to tender the defense of any lawsuit filed and related in whole or in part to Project Litigation with legal counsel selected by City. Developer will indemnify, hold City harmless from, and defend City from all costs and expenses incurred in the defense of such lawsuit, including, but not

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limited to, damages, attorneys' fees, and expenses of litigation awarded to the prevailing party or parties in such litigation. Developer shall pay all litigation fees to City, within thirty (30) days of receiving a written request and accounting of such fees and expenses, from City.

Notwithstanding the aforementioned, City may request, and Developer will provide to City within seven (7) days of any such request, a deposit to cover City's reasonably anticipated Project Litigation fees and costs.

**Section 10.8. Constructive Notice and Acceptance.** Every person who after the Effective Date and recording of this Agreement owns or acquires any right, title, or interest to any portion of the Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Site, and all rights and interests of such person in the Site shall be subject to the terms, requirements, and provisions of this Agreement.

**Section 10.9. Statute of Limitations and Laches.** City and Developer agree that each Party will undergo a change in position in detrimental reliance upon this Agreement from the time of its execution and subsequently. The Parties agree that section 65009(c)(1)(D) of the California Government Code, which provides for a ninety (90) day statute of limitations to challenge the adoption of this Agreement, is applicable to this Agreement. In addition, any person who may challenge the validity of this Agreement is hereby put on notice that, should the legality or validity of this Agreement be challenged by any third party in litigation, which is filed and served more than ninety (90) days after the execution of this Agreement, City and Developer shall each assert the affirmative defense of laches with respect to such challenge, in addition to all other available defenses. This Section in no way limits the right of a Party, claiming that the other Party breached the terms of this Agreement, to bring a claim against the other Party within the four (4) year statute of limitations set forth in Section 337 of the California Civil Code.

**Section 10.10. Change in State Regulations.** In no event shall Developer operate the Project in violation of the Agreement, or any applicable regulations issued pursuant to the California Cannabis Laws, as may be amended from time to time.

**Section 10.11. Standard Terms and Conditions.**

(a) **Venue.** Venue for all legal proceedings shall be in the Superior Court of California in and for the County of Fresno.

(b) **Waiver.** A waiver by any Party of any breach of any term, covenant, or condition herein contained or a waiver of any right or remedy of such Party available hereunder, at law or in equity, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition herein contained or of any continued or subsequent right to the same right or remedy. No Party shall be deemed to have made any such waiver unless it is in writing and signed by the Party so waiving.

(c) **Completeness of Instrument.** This Agreement, together with its specific references, attachments, and Exhibits, constitutes all of the agreements, understandings, representations, conditions, warranties, and covenants made by and between the Parties hereto.



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Unless set forth herein, no Party to this Agreement shall be liable for any representations made, express or implied.

(d) **Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, or representations, written, electronic, or oral, between the Parties hereto with respect to the Site and the Project.

(e) **Captions.** The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

(f) **Number and Gender.** In this Agreement, the neutral gender includes the feminine and masculine, and the singular includes the plural, and the word "person" includes corporations, partnerships, firms, or associations, wherever the context requires.

(g) **Mandatory and Permissive.** "Shall" and "will" and "agrees" are mandatory. "May" or "can" are permissive.

(h) **Term Includes Extensions.** All references to the Term of this Agreement shall include any extensions of such Term.

(i) **Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

(j) **Other Documents.** The Parties agree that they shall cooperate in good faith to accomplish the objectives of this Agreement and, to that end, agree to execute and deliver such other instruments or documents as may be necessary and convenient to fulfill the purposes and intentions of this Agreement.

(k) **Time is of the Essence.** Time is of the essence in this Agreement in each covenant, term, and condition herein.

(l) **Authority.** All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states, or firms and that all former requirements necessary or required by state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, no Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

(m) **Document Preparation.** This Agreement will not be construed against the Party preparing it, but will be construed as if prepared by all Parties.

(n) **Advice of Legal Counsel.** Each Party acknowledges that it has reviewed this Agreement with its own legal counsel and, based upon the advice of that counsel, freely entered into this Agreement.

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(o) **Attorney's Fees and Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

(p) **Calculation of Time Periods.** Unless expressly stated otherwise, all time referenced in this Agreement shall be calendar days, unless the last day falls on a legal holiday, Saturday, or Sunday, in which case the last day shall be the next business day.

(q) **Confidentiality.** Both Parties agree to maintain the confidentiality of the other Party's "Confidential Information" under this Agreement and shall not disclose such information to third parties. "Confidential Information" shall include, but not be limited to, business plans, trade secrets, and industry knowledge. Confidential Information shall not apply to information that: (i) is in the public domain at the time of disclosures or (ii) is required to be disclosed pursuant to a court order, governmental authority, or existing state law.

[SIGNATURES ON FOLLOWING PAGE]

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**IN WITNESS WHEREOF**, this Agreement has been entered into by and between Developer and City as of the Effective Date of the Agreement, as defined above.

**"CITY"**

**"DEVELOPER"**

Date: \_\_\_\_\_, 2020

Date: \_\_\_\_\_, 2020

CITY OF MENDOTA, CA  
a California Municipal Corporation

LEFT MENDOTA I, LLC, a Delaware  
Limited Liability Company

\_\_\_\_\_  
By: Cristian Gonzalez  
Its: City Manager

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

Attest:

\_\_\_\_\_  
Celeste Cabrera-Garcia  
City Clerk

Approved to as Form:

\_\_\_\_\_  
John P. Kinsey  
City Attorney

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**Exhibit A**

Legal Description

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**Exhibit B**

Site Map

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**Exhibit C**

**Notice of Non-Performance Penalty**

Pursuant to Article 4, Section 4.5 of the Development Agreement by and between the City of Mendota ("City") and LEFT MENDOTA I, LLC ("Developer") for the development of property located at 1269 Marie Street, Mendota, California 93640 ("Agreement"), if Developer fails to make any payment required by the Agreement, the City may impose a Non-Performance Penalty of one percent (1%) to all past due payments. Pursuant to the Agreement, City shall deliver a Notice of Non-Performance Penalty ("Notice") to Developer, and Developer shall pay the Non-Performance Penalty in a single installment due on or before a date fifteen (15) calendar days following delivery of the Notice.

City hereby informs Developer that Developer has failed to make payment(s) required by the Agreement. The past due amount is \_\_\_\_\_. Accordingly, pursuant to Section 4.5 of the Agreement, a penalty of \_\_\_\_\_ ("Penalty Amount") is hereby imposed. Please remit payment of the Penalty Amount by \_\_\_\_\_.

\_\_\_\_\_  
City Manager  
City of Mendota

\_\_\_\_\_ Date \_\_\_\_\_

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**Exhibit D**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL  
TO:**

City of Mendota  
643 Quince St  
Mendota, CA 93640  
Attn: City Manager

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Recording Fee Exempt per Government Code §6103

**Notice of Termination**

Pursuant to Article 9, Section 9.1 of the Development Agreement by and between the City of Mendota ("City") and LEFT MENDOTA I, LLC ("Developer") for the development of property located at 1269 Marie Street, Mendota, California 93640 ("Agreement"),

\_\_\_\_\_ informs \_\_\_\_\_ that the Agreement is hereby terminated, in accordance with the terms and conditions as stated therein, pursuant to Article \_\_\_\_, Section \_\_\_\_.

In accordance with Article 9, Section 9.1 of the Agreement, City shall record this Notice of Termination.

\_\_\_\_\_  
Title:  
Entity:

\_\_\_\_\_  
Date

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**Exhibit E**

**Assignment and Assumption Agreement**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), **LEFT MENDOTA I, LLC**, a Delaware limited liability company ("Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee"). City, Assignor, or Assignee may be referred to herein individually as a "Party" or collectively as the "Parties." There are no other parties to this Agreement.

**RECITALS**

A. City and Assignor entered into a development agreement, dated \_\_\_\_\_, for the development of property located at 1269 Marie Street, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-280-15 ("Development Agreement"), attached hereto as Exhibit "1" and incorporated herein by this reference;

B. Pursuant to Article 10, Section 10.1 of the Development Agreement, Assignor may transfer all or part of its rights, title, and/or interests in all or a portion of Site, or Project, as those terms are defined in the Development Agreement, to any person, firm, corporation, or entity during the Term of the Development Agreement only with the advance written consent of the City Manager, who shall not unreasonably withhold or condition such consent;

C. Assignor desires to transfer to Assignee some or all of Assignor's rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement;

D. Assignee desires to assume some or all of Assignor's rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement;

E. The City Manager has agreed to permit Assignor's transfer of some or all of Assignor's rights and obligations under the Development Agreement to Assignee, and to Assignee's assumption of same, subject to the terms and conditions specified in this Agreement;

F. The Parties intend through this Agreement to allow Assignor to transfer, and Assignee to assume, some or all of Assignor's rights and obligations under the Development Agreement, in accordance with Article 10, Section 10.1 of the Development Agreement.

G. The City Council has conducted all necessary proceedings in accordance with City's Municipal Code for the approval of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

**AGREEMENT**



EXHIBIT "A" TO RESOLUTION NO. PC 20-03  
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**Section 1. Assignment.** Assignor hereby assigns to Assignee (all/some) of Assignor's rights and obligations under the Development Agreement. If Assignor is transferring only some of Assignor's rights and obligations under the Development Agreement, then the specific rights and obligations subject to transfer shall be specified in Exhibit "1," attached hereto and incorporated herein by this reference.

**Section 2. Assumption.** Assignee hereby accepts and assumes the foregoing transfer or assignment of (all/some) of Assignor's rights and obligations under the Development Agreement.

**Section 3. Consent.** In accordance with Article 10, Section 10.1 of the Development Agreement, the City Manager hereby consents to Assignor's transfer of, and Assignee's assumption of, Assignor's rights and obligations under the Development Agreement, as specified herein, subject to any reasonable terms and conditions the City Manager may require, as set forth in Exhibit "2," attached hereto and incorporated herein.

**Section 4. Conditions of Assignment.** The Parties hereby agree to abide by the terms or conditions of assignment, if any, set forth in Exhibit 2, and acknowledge that City's consent would not have been provided but for the Parties' agreement to abide by the terms or conditions of assignment.

**Section 4. Effective Date.** The assignment and assumption of rights and obligations as specified herein shall be effective on \_\_\_\_\_.

**Section 5. Terms of the Development Agreement.** The terms of the Development Agreement are incorporated herein by this reference. Assignor acknowledges and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Development Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein.

**Section 6. Inconsistency.** In the event of any conflict or inconsistency between the terms of the Development Agreement and the terms of this Agreement, the terms of the Development Agreement shall govern.

**Section 7. Further Actions.** Each of the Parties hereto covenants and agrees, at its own expense, to execute and deliver, at the request of the other Parties hereto, such further instruments of transfer and assignment and to take such other action as such the other Parties may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Agreement.

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**"City"**

Date: \_\_\_\_\_, \_\_\_\_

CITY OF MENDOTA, CA  
a California Municipal Corporation

\_\_\_\_\_  
By: Cristian Gonzalez  
Its: City Manager

Attest:

\_\_\_\_\_  
\_\_\_\_\_  
City Clerk

Approved to as Form:

\_\_\_\_\_  
John P. Kinsey  
City Attorney

**"Assignor"**

Date: \_\_\_\_\_, \_\_\_\_

LEFT MENDOTA I, LLC, a Delaware Limited  
Liability Company

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

**"Assignee"**

Date: \_\_\_\_\_, \_\_\_\_

Name:  
Corporate Status:

\_\_\_\_\_  
Title:  
Name:

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**Exhibit 1**  
**(Interest Subject to Transfer)**

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**Exhibit 2**  
**(Conditions of Consent)**

