



CITY OF MENDOTA

"Cantaloupe Center Of The World"

JUAN LUNA
Chairperson
JOSE GUTIERREZ
Vice-Chairperson
LIBERTAD LOPEZ
JOSHUA PEREZ
JESSICA SANCHEZ
JONATHAN LEIVA
Alternate Commissioner

CITY OF MENDOTA PLANNING COMMISSION AGENDA

City Council Chambers
Mendota, CA 93640
REGULAR MEETING
April 20, 2021
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=NWRGeVVlSVNnVFILaUtzNytXemhodz09>

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 February 16, 2021, and the minutes of the special Planning Commission meetings of February 17, 2021 and March 3, 2021.
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 21-01**, recommending that the City Council amend Mendota Municipal Code Section 17.99.080 to repeal the prohibition of cannabis dispensaries in the Commercial Cannabis Overlay District.
 - 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 21-01 for adoption*

2. Commission discussion and consideration of **Resolution No. PC 21-02**, making a determination of exemption from the California Environmental Quality Act and approved a conditional use permit, and **Resolution No. PC 21-03**, recommending that the City Council approve a development agreement with Element 7 Mendota LLC.
 - 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 21-02 and 21-03 for adoption*

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, April 20, 2021 was posted on the outside bulletin board of City Hall, 643 Quince Street on Friday, April 16, 2021 at 2:45 p.m.



Celeste Cabrera-Garcia, City Clerk



CITY OF MENDOTA PLANNING COMMISSION MINUTES

Regular Meeting

Tuesday, February 16, 2021

6:30 p.m.

Meeting called to order by City Clerk Cabrera-Garcia at 6:32 PM.

Roll Call

Commissioners Present: Chairperson Juan Luna, Vice-Chairperson Jose Gutierrez (at 6:37 p.m.), Commissioners Libertad Lopez, Joshua Perez, Jessica Sanchez, and Jonathan Leiva

Commissioners Absent: None

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

Flag Salute led by City Clerk Cabrera-Garcia

FINALIZE THE AGENDA

1. Adjustments to Agenda
2. Adoption of final Agenda

A motion was made by Commissioner Leiva to adopt the agenda, seconded by Commissioner Luna; unanimously approved (5 ayes, absent: Gutierrez).

SWEARING IN

1. City Clerk Cabrera-Garcia to swear in Commissioners Jonathan Leiva, Libertad Lopez, Joshua Perez, and Jessica Sanchez.

City Clerk Cabrera-Garcia swore in Commissioners Leiva, Lopez, Perez, and Sanchez.

REORGANIZATION OF THE PLANNING COMMISSION

1. City Clerk Cabrera-Garcia to conduct the Commission reorganization proceedings and accept nominations for the following offices:
 - a) Chairperson
 - b) Vice-Chairperson

City Clerk Cabrera-Garcia introduced the item and opened the nomination period for the office of Chairperson.

Commissioner Luna nominated himself.

Hearing no other nominations, City Clerk Cabrera-Garcia closed the nomination period and announced that a roll call vote would be conducted to consider the appointment of Commissioner Luna as Chairperson.

Discussion was held on the role of the Chairperson.

Roll Call Vote:

Gutierrez: Yes; Lopez: Yes; Luna: Yes; Perez: Yes; and Sanchez: Yes.

Commissioner Luna was appointed to the office of Chairperson with a unanimous vote of five (5) ayes.

City Clerk Cabrera-Garcia opened the nomination period for the office of Vice Chairperson.

Commissioner Gutierrez nominated himself.

Hearing no other nominations, City Clerk Cabrera-Garcia closed the nomination period and announced that a roll call vote would be conducted to consider the appointment of Commissioner Gutierrez as Vice Chairperson.

Discussion was held on the length of the offices.

Roll Call Vote:

Gutierrez: Yes; Lopez: Yes; Luna: Yes; Perez: Yes; and Sanchez: Yes.

Commissioner Gutierrez was appointed to the office of Vice Chairperson with a unanimous vote of five (5) ayes.

MINUTES AND NOTICE OF WAIVING OF READING

1. Approval of the minutes of the regular Planning Commission meeting of December 15, 2020, and the minutes of the special Planning Commission meetings of December 22, 2020 and December 29, 2020.
3. Notice of waiving the reading of all resolutions introduced and/or adopted under this agenda.

A motion to approve items 1 and 2 was made by Vice Chairperson Gutierrez, seconded Commissioner Perez; unanimously approved (5 ayes).

WORKSHOP

1. City staff to give brief presentations on the role of the Planning Commission and various planning policies, processes, and functions.

City Clerk Cabrera-Garcia and City Planner O'Neal provided presentations on the various planning policies, processes, and functions.

At 6:45 p.m. Chairperson Luna left the meeting and returned at 6:49 p.m. At 6:50 p.m. Chairperson Luna left the meeting and returned at 6:54 p.m.

Discussion was held throughout the presentation.

PUBLIC COMMENT ON ITEMS THAT ARE NOT ON THE AGENDA

Nothing to report.

PLANNING DIRECTOR UPDATE

City Manager Gonzalez congratulated the new Commissioners.

Vice Chairperson Gutierrez inquired on a potential new housing subdivision.

PLANNING COMMISSIONERS' REPORTS

Chairperson Luna congratulated the new Commissioners.

ADJOURNMENT

At the hour of 7:50 p.m. with no more business to be brought before the Planning Commission, a motion for adjournment was made by Vice Chairperson Gutierrez, seconded by Commissioner Perez; unanimously approved (5 ayes).

Juan Luna, Chairperson

ATTEST:

Celeste Cabrera-Garcia, City Clerk



**MINUTES OF MENDOTA
CITY COUNCIL, PLANNING COMMISSION, AND
RECREATION COMMISSION
JOINT WORK/STUDY SESSION**

Joint Work/Study Session Wednesday, February 17, 2021 10:00 AM

Meeting called to order by City Clerk Cabrera-Garcia at 10:05 a.m.

ROLL CALL CITY COUNCIL

Council Members Present: Mayor Rolando Castro, Mayor Pro Tem Jesus Mendoza, and Council Members Jose Alonso, Joseph Riofrio, and Oscar Rosales

Council Members Absent: None

ROLL CALL PLANNING COMMISSION

Commissioners Present: Vice Chairperson Jose Gutierrez, Commissioners Libertad Lopez, Joshua Perez, Jessica Sanchez, and Jonathan Leiva-Castillo

Commissioners Absent: Chairperson Juan Luna

ROLL CALL RECREATION COMMISSION

Commissioners Present: Chairperson Jesus Mendoza, Commissioners Antonio Pizano, Jessica Sanchez, and Josue Urias

Commissioners Absent: Vice Chairperson Paul Ochoa and Commissioner Kevin Romero

Flag Salute led by City Clerk Cabrera-Garcia.

WORK/STUDY SESSION

1. AB 1825 – Sexual Harassment Prevention Training

Steven Crass with Wanger, Jones, & Helsley PC provided the sexual harassment prevention training.

Discussion was held throughout the training.

PUBLIC COMMENT

None offered.

ADJOURNMENT

Consensus was reached to adjourn the work/study session at 12:05 p.m.

Juan Luna, Chairperson

ATTEST:

Celeste Cabrera, City Clerk



**MINUTES OF MENDOTA
CITY COUNCIL, PLANNING COMMISSION, AND
RECREATION COMMISSION
JOINT WORK/STUDY SESSION**

Joint Work/Study Session Wednesday, March 3, 2021 10:00 AM

Meeting called to order by City Clerk Cabrera-Garcia at 10:05 a.m.

ROLL CALL CITY COUNCIL

Council Members Present: Mayor Rolando Castro, Mayor Pro Tem Jesus Mendoza, and Council Members Jose Alonso, Joseph Riofrio, and Oscar Rosales

Council Members Absent: None

ROLL CALL PLANNING COMMISSION

Commissioners Present: Vice Chairperson Jose Gutierrez, Commissioners Joshua Perez, Jessica Sanchez, and Jonathan Leiva-Castillo

Commissioners Absent: Chairperson Juan Luna and Commission Libertad Lopez

ROLL CALL RECREATION COMMISSION

Commissioners Present: Chairperson Jesus Mendoza, Commissioners Antonio Pizano, Kevin Romero, Jessica Sanchez, and Josue Urias

Commissioners Absent: Vice Chairperson Paul Ochoa

Flag Salute led by City Clerk Cabrera-Garcia.

WORK/STUDY SESSION

1. AB 1234 – Ethics Training

City Attorney Kinsey provided the ethics training.

Discussion was held throughout the training.

PUBLIC COMMENT

None offered.

ADJOURNMENT

Consensus was reached to adjourn the work/study session at 12:01 p.m.

Juan Luna, Chairperson

ATTEST:

Celeste Cabrera-Garcia, City Clerk

AGENDA ITEM – STAFF REPORT

TO: HONORABLE CHAIR AND COMMISSIONERS
FROM: JEFFREY O'NEAL, AICP, CITY PLANNER
SUBJECT: ZONING TEXT AMENDMENT TO MENDOTA MUNICIPAL CODE SECTION 18.99.080
DATE: APRIL 20, 2021

ISSUE

Shall the Planning Commission adopt Resolution No. PC 21-01, recommending that the City Council amend Mendota Municipal Code Section 17.99.080 to repeal the prohibition of cannabis dispensaries in the Commercial Cannabis Overlay District?

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. Since the enactment of the ordinances, each has been amended on occasion to modify various provisions, remove inconsistencies or conflicts, and streamline processes.

Section 17.99.080 currently prohibits dispensaries within the Commercial Cannabis Overlay District (CCOD). Section 8.37.100 allows up to one (1) dispensary per 20,000 population within the City. However, the definition of "dispense" includes any retail sale, which by extension includes both storefront activities and delivery. The approved project at 1269 Marie Street could conceivably house multiple tenants involved in "dispensing" via delivery, and there is a current proposal for a storefront retail at 796 Oller Street. The 1/20,000 ratio cannot support the approved and proposed uses.

The City has determined that additional amendments to both Chapters 8.37 and 17.99 are necessary in order to facilitate processing, approval, and operation of existing and proposed projects. Accordingly, at this time the Planning Commission will be asked to review the proposed change to Section 17.99.080 and make a recommendation to the City Council. Although the Planning Commission does not have recommending authority for code changes aside from the zoning ordinance, for reference purposes the proposed change to Section 8.37.100 is also discussed herein.

ANALYSIS

The proposed amendment to Section 17.99.080 would simply remove the prohibition on dispensaries in the CCOD, thus allowing the potential for multiple tenants within the 1269 Marie Street project, or other project that may be proposed in the future. The section would be reserved for future use if needed.

Similarly, the proposed amendment to Section 8.37.100 would strike the limitation of one dispensary per 20,000 residents and reserve that section for future use.

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 an amendment to the zoning ordinance as described in CEQA Guidelines Section 15378(a)(1).

The proposal does not authorize any particular activity. Approved development was subject to CEQA analysis as are projects currently under review. Therefore, 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.

PUBLIC NOTICE

Notice of the public hearing was published in the April 9, 2021 edition of *The Business Journal* and was posted at City Hall.

FISCAL IMPACT

Approximately \$1,500 of staff time for preparation of documents and public noticing. The amendment may result in extensive future revenue via approval and operation of commercial cannabis facilities.

RECOMMENDATION

Staff recommends that the Planning Commission Adopts Resolution No. PC 21-01, forwarding a recommendation to the City Council to amend Section 17.99.050 of the Mendota Municipal Code.

Attachment:

Resolution No. PC 21-01, including proposed ordinance language

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

**A RESOLUTION OF THE PLANNING COMMISSION RESOLUTION NO. PC 21-01
OF THE CITY OF MENDOTA RECOMMENDING
THAT THE CITY COUNCIL OF THE CITY OF MENDOTA
AMENDS MENDOTA MUNICIPAL CODE SECTION
17.99.050 REGARDING DISPENSARIES IN THE
COMMERCIAL CANNABIS OVERLAY DISTRICT**

WHEREAS, pursuant to the authority granted to the City of Mendota (“City”) by Article XI, Section 7 of the California Constitution, the City has the police power to adopt regulations designed to promote the public health, the public morals, or public safety; and

WHEREAS, comprehensive zoning regulations and regulations upon the use of land and property lie within the City’s police power; and

WHEREAS, in 1996, the voters of the State of California adopted the Compassionate Use Act of 1996 (“CUA”), the intent being to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of state criminal prosecution under limited, specified circumstances; and

WHEREAS, in 2003, Senate Bill 420, titled the “Medical Marijuana Program Act” (“MMPA”), was enacted to clarify the scope of the CUA and to promulgate rules by which counties and cities can adopt and enforce regulations consistent with its provisions; and

WHEREAS, in 2011, Assembly Bill 2650 was enacted, affirming that counties and cities can under state law adopt ordinances that control and restrict the location and establishment of a medical cannabis cooperative, collective, dispensary, operator, establishment, or provider; and

WHEREAS, in late 2015, the Legislature passed, and the Governor signed, three pieces of legislation, AB 266, AB 243, and SB 643, collectively called the Medical Marijuana Regulation and Safety Act (“MMRSA”), which provides a statewide program for the licensing and regulation of commercial medical cannabis activity, specifically, the operation of medical cannabis dispensaries and the delivery and cultivation of medical cannabis; and

WHEREAS, in November 2016, the voters of the State of California adopted the Adult Use of Marijuana Act (“AUMA”), the intent being to establish a comprehensive system to legalize, control, and regulate the cultivation, processing, manufacturing, distribution, testing, and sale of nonmedical cannabis, including cannabis products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of cannabis; and

WHEREAS, in 2012, as amended in 2016 and 2017, the City adopted Chapter 8.36 of the Mendota Municipal Code pertaining to recreational and medical cannabis activities, which banned commercial cannabis cultivation, commercial deliveries of cannabis, and cannabis dispensaries in the City based upon various health, safety, welfare, and land use findings relating to cannabis cultivation, dispensing, and consumption; and

WHEREAS, in 2017, the Legislature passed, and the Governor signed, SB 94 and AB 133, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), integrating the MCRSA and AUMA to create a general framework for the regulation of commercial medicinal and adult-use cannabis in California; and

WHEREAS, in 2017, the City added Chapter 17.99 to the Mendota Municipal Code (“MMC”) establishing the Commercial Cannabis Overlay District (“CCOD”) in order to address a number of health, safety, and welfare concerns associated with cannabis activities, and amended Chapter 8.36 for consistency therewith; and

WHEREAS, on June 11, 2019, the City adopted Ordinance No. 19-06, which amended Chapter 8.36 of the MMC to eliminate the ban on cannabis dispensaries, and added Chapter 8.37 to the MMC, which established regulations for the operation of commercial cannabis businesses, including cannabis dispensaries, referred to therein as commercial cannabis retail businesses; and

WHEREAS, on September 22, 2020, the City adopted Ordinance No. 20-16 to amend Chapter 17.99 of the MMC to further address a number of health, safety, and welfare concerns associated with cannabis activities within the CCOD, and amended Chapter 8.36 for consistency therewith; and

WHEREAS, on September 22, 2020, the City adopted Ordinance No. 20-16 to preserve and promote the public health, safety, and welfare of its citizens, to facilitate the establishment of permitted commercial cannabis businesses within the City while ensuring such businesses do not interfere with other lawful land uses, and to provide new sources of revenue to fund City services; and

WHEREAS, the City has determined that further amendments to Chapter 17.99 of Title 17 of the MMC are required to create consistency with the City’s June 11, 2019, adoption of Ordinance No. 19-06; the City’s September 22, 2020, adoption of Ordinance No. 20-16; to avoid internal conflict within the MMC; and to avoid conflicts as the MMC relates to that certain Development Agreement entered into on or about March 13, 2018, between the City and Marie Street Development, LLC, as amended and augmented by Left Mendota I, LLC, with the adoption of City Ordinance No. 21-04 on or about February 9, 2021; and

WHEREAS, the City has determined that banning cannabis dispensaries in the CCOD is not necessary to promote the health, safety, and welfare of the citizens of the City of Mendota; and

WHEREAS, repealing the limitation on cannabis dispensaries in the CCOD affords the City a greater degree of control and oversight over the development of the cannabis business community within the City of Mendota; and

WHEREAS, the proposed amendments to Chapter 17.99 of Title 17 of the MMC will have a positive impact on the City and its citizens by generating significant revenues that would support transportation, parks and recreation, law enforcement, and fire protection services throughout the City.

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).

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Mendota recommends that the City Council of the City of Mendota amends the text of Mendota Municipal Code Section 17.99.050 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 20th day of April 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

Exhibit "A"
Resolution No. PC 21-01

Chapter 17.99 of Title 17 of the Mendota Municipal Code is hereby amended to read as follows:

17.99.080 – ~~Prohibited uses.~~ Reserved

~~The following uses shall be prohibited in the Commercial Cannabis Overlay~~

District:

A. ~~Cannabis dispensaries.~~

AGENDA ITEM – STAFF REPORT

TO: HONORABLE CHAIR AND COMMISSIONERS
FROM: JEFFREY O’NEAL, AICP, CITY PLANNER
SUBJECT: APPLICATION NO. 20-22, THE ELEMENT 7 COMMERCIAL CANNABIS PROJECT
DATE: APRIL 20, 2021

ISSUE

In the matter of Application No. 20-22, the Element 7 Commercial Cannabis Project, shall the Planning Commission adopt Resolution No. PC 21-02 making a determination of exemption from the California Environmental Quality Act and approving a conditional use permit and adopt Resolution No. PC 21-03 recommending that the City Council approves a Development Agreement?

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 October 7, 2020, the Planning Department received an application for a conditional use permit and development agreement to authorize a cannabis dispensary within an existing building at 796 Oller Street.

<u>Owner:</u>	Ramon and Martha Gonzalez
<u>Applicant:</u>	Element 7 Mendota LLC
<u>Location:</u>	796 Oller Street, APN 013-191-18 See attached map and photo
<u>Site Size:</u>	Approximately 22,500 square feet
<u>General Plan:</u>	General Commercial
<u>Zoning:</u>	C-3/EIZ (Central Business and Shopping District/Economic Incentive Zone)
<u>Existing Use:</u>	Restaurant/night club (inactive), nonconforming residential uses
<u>Surrounding Uses:</u>	North – Various commercial uses; C-3/EIZ East – Various commercial uses; C-3/EIZ South – Commercial and residential uses; C-3/EIZ, R-3 West – Residential uses; R-3
<u>Street Access:</u>	Oller Street (State Route 180), alley

The project site currently supports a combination of vacant commercial uses and occupied residences.

ANALYSIS

The project proposes to convert an approximately 2,500-square-foot (SF) area of the main building for use as a cannabis dispensary, to include storefront retail and delivery. The applicant proposes to restripe the existing parking area; staff recommends that at a minimum the accessible area of the parking and circulation area be reconstructed to meet California Building Code requirements and the remainder be sealed prior to restriping.

The facility would operate seven days per week between 8:00am and 10:00pm and would ultimately employ approximately 13-17 people. Element 7 expects to serve approximately 120 customers per day within the storefront component.

Ingress and egress may be via Oller Street (State Route 180) and the abutting alley. The cannabis operation would be completely separated from the residential components of the site.

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 10 years. During that time, the applicant will pay various public benefit fees to the City:

1. Square Footage Payment. An annual payment of \$5.00 per developed square foot of the site (\$12,635 based on 2,527 SF).
2. Flat Rate Payment. An annual payment of \$50,000 made in quarterly installments.
3. Gross Receipts Payment. Three percent (3%) of the yearly gross receipts from the project, estimated to be \$90,000 for the first year based on estimated revenue of \$3 million.

The project would also be subject to local hiring and spending provisions. It would make an annual \$50,000 commitment to the ELEMENT 7 CARES fund to promote local community development. Its representatives would be required to regularly correspond with City officials and Mendota businesses and residents to further mutual causes.

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 would occur within an existing building and would involve minimal site and building modifications, staff supports a finding of exemption consistent with CEQA Guidelines Section 15301, Existing Facilities.

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. It will occur within an existing building and onsite parking has been provided to adequately address the anticipated number of vehicles, as well as provide compliance with the Americans with Disabilities Act.

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.

Oller Street is a major collector type street, and the site also has access to the abutting alley. The anticipated 120 customers per 14-hour day, not all of whom would be in passenger vehicles, are not expected to unduly affect traffic levels. The site's relationship to adjacent streets is adequate for the proposed use.

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 restaurant and night club. 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 utilizing a current vacant structure. 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 April 9 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 annually. Building fees will be determined when a building permit is requested.

RECOMMENDATION

Staff recommends that the Planning Commission:

1. Adopts Resolution No. PC 21-02, making a determination of exemption from the California Environmental Quality Act and approving the conditional use permit contained in Application No. 20-22.
2. Adopts Resolution No. PC 21-03, forwarding a recommendation to the City Council to approve the Development Agreement contained in Application No 20-22.

Attachment(s):

1. Aerial photo
2. Assessor's Parcel Map
3. Resolution No. PC 21-02, including site plan
4. Resolution No. PC 21-03, including development agreement



Application No. 20-22
APN 013-191-18

Element 7 Mendota, LLC
796 Oller Street

 Project

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

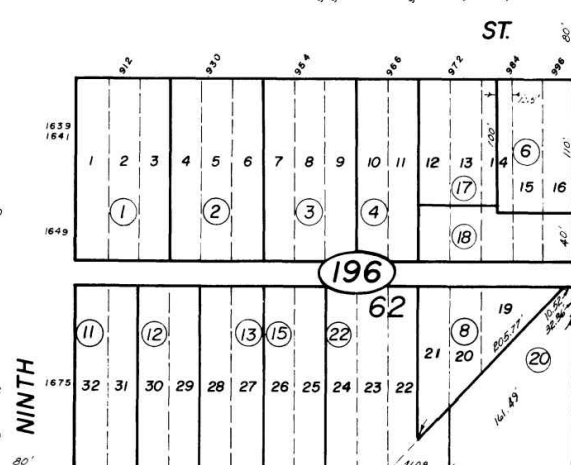
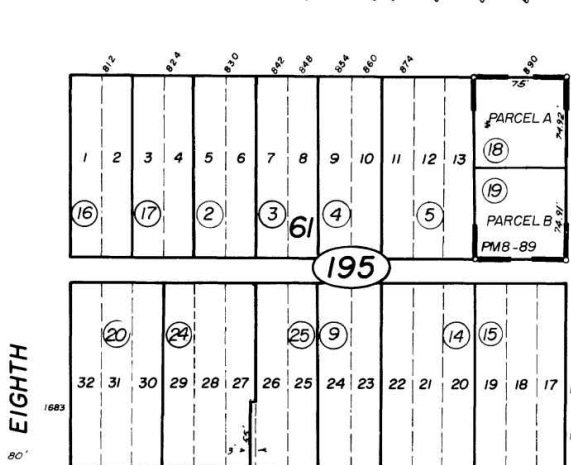
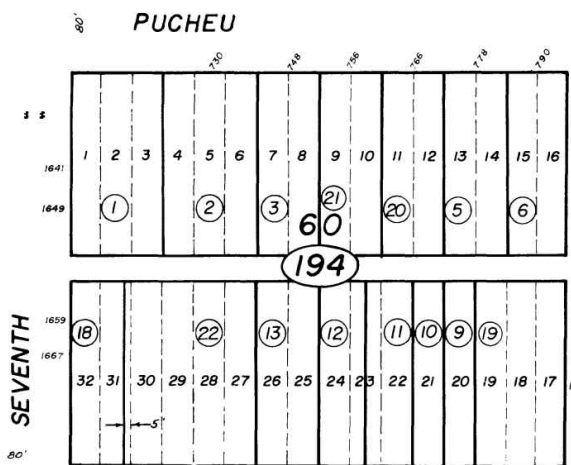
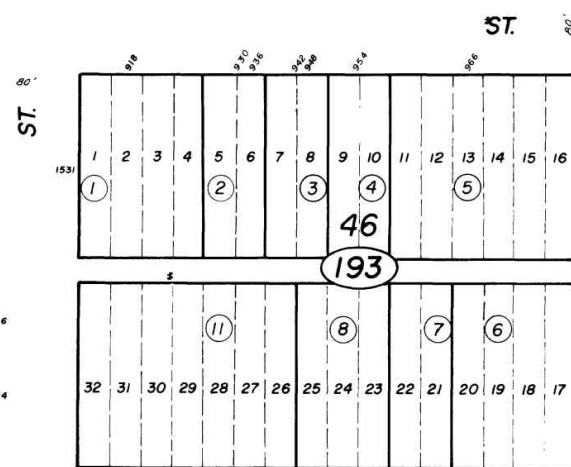
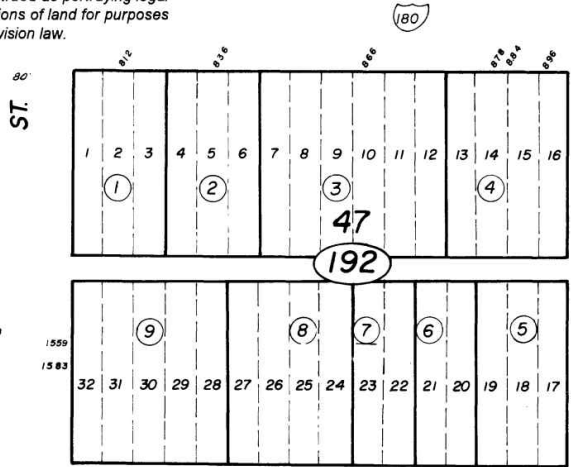
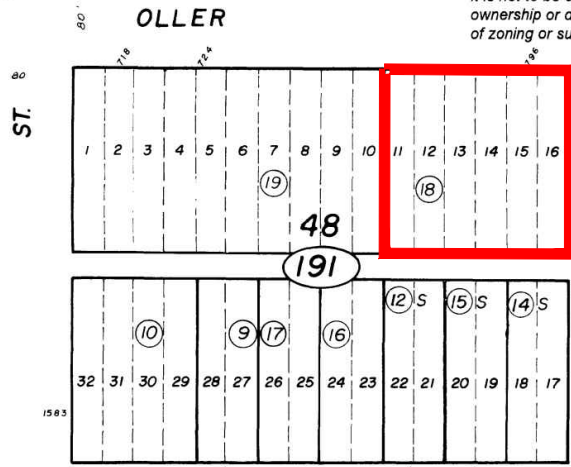
Tax Area
12-010

13-19

— 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.

14

15



QUINCE

TENTH

Parcel Map - Bk. 8, Pg. 89
Town of Mendota - Misc. 1, Pg. 18

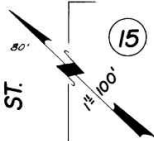
Assessor's Map Bk. 13 - Pg. 19
County of Fresno, Calif.

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

Application No. 20-22
APN 013-191-18

Element 7 Mendota, LLC
796 Oller Street

Project



20

20

23

1961

5

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

**A RESOLUTION OF THE PLANNING COMMISSION RESOLUTION NO. PC 21-02
OF THE CITY OF MENDOTA MAKING A DETERMIN-
ATION OF EXEMPTION FROM THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT AND APPROVING
A CONDITIONAL USE PERMIT FOR APPLICATION
NO. 20-22, THE ELEMENT 7 COMMERCIAL CAN-
NABIS PROJECT AT 796 OLLER STREET (APN
013-191-18)**

WHEREAS, on October 7, 2020 the City of Mendota received Application No. 20-22, submitted by Element 7 Mendota 1 LLC and proposing the operation of a cannabis dispensary within an existing building at 796 Oller Street (Fresno Co. APN 013-191-18)

WHEREAS, the project site is designated General Commercial by the City of Mendota 2005-2025 General Plan and is zoned C-3/EIZ (Central Business and Shopping/Economic Incentive Zone); and

WHEREAS, the proposed use is permitted in the C-3/EIZ 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 April 20, 2021 the Mendota Planning Commission conducted a public hearing at a regular meeting to consider Application No. 20-22; and

WHEREAS, on April 9, 2021 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 involves an existing facility and would result in minimal site and building improvements and thus meets the criteria described in CEQA Guidelines Section 15301; 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. 20-22 is exempt from the California Environmental Quality Act under CEQA Guidelines Section 15301.
2. The conditional permit as proposed in Application No. 20-22 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 20th day of April 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

ATTACHMENT "A TO RESOLUTION NO. PC 21-02
SITE PLAN FOR APPLICATION NO. 20-22

ELEMENT 7 MENDOTA LLC
TENANT IMPROVEMENT



CANNABIS RETAIL DISPENSARY & DELIVERY
796 OLLER ST. MENDOTA, CA 93640

GOVERNING CODE	SHEET INDEX	SATELLITE VIEW
<p>This project shall comply with the followings including local amendments:</p> <ul style="list-style-type: none"> 2019 California Building Code (CBC) 2019 California Existing Building Code 2019 California Fire Code (CFC) 2019 California Mechanical Code (CMC) 2019 California Plumbing Code (CPC) 2019 California Electrical Code (CEC) 2019 California Green Building Standards Code (CGBS) 2019 California Energy Code Willows Municipal Code w/ Local Amendments (Latest Edition) 	<p>ARCHITECTURAL</p> <ul style="list-style-type: none"> A00 COVER SHEET A01 PROPOSED SITE PLANS A02 PROPOSED FLOOR PLAN A03 PROPOSED SECURITY CAMERA PLAN A04 EXISTING & PROPOSED EXTERIOR ELEVATIONS 	
CODE ANALYSIS	SCOPE OF WORK	VICINITY MAP
<p>PROPOSED OCCUPANCY:</p> <ul style="list-style-type: none"> USE GROUP-M, MERCANTILE RETAIL (MEDICAL MARIJUANA DISPENSARY) USE GROUP S-1, (RETAIL MARIJUANA DELIVERY & STORAGE) <p>OCCUPANT LOAD FACTOR</p> <p>REQUIRED & PROPOSED:</p> <ul style="list-style-type: none"> 60 SQ. FT. GROSS PER PERSON FOR RETAIL 300 SQ. FT. GROSS PER PERSON FOR STORAGE, STOCK, SHIPPING 	<ol style="list-style-type: none"> CHANGING AN EXISTING RESTAURANT INTO A CANNABIS RETAIL DISPENSARY & DELIVERY W/ EXISTING PARKING LOT & NEW PARKING SPACES ADDED A NEW ACCESSIBLE EXTERIOR RAMP AT OLLER STREET SIDE 	
PROPERTY INFORMATION		
<p>APN / PARCEL ID: 013-191-18</p> <p>ZONING: C-3 (COMMERCIAL DISTRICT - CENTRAL BUSINESS AND SHOPPING)</p> <p>EXISTING LAND AREA: 0.32 ACRE (22,651 SQ. FT.)</p> <p>EXISTING BUILDING ENTIRE AREA: 6,556 SQ. FT.</p> <p>CONSTRUCTION TYPE: V-B</p> <p>#STORES: 1</p> <p>YEAR BUILT: 1955</p> <p>PROPOSED PROJECT LEASING AREA: 2,227 SQ. FT. (INCLUDING EXTERIOR WALL THICKNESS)</p> <p>EXISTING LANDSCAPE: EXISTING TREES</p> <p>EXISTING PARKING LOT: 14 PARKING SPACES (INCLUDING ONE STANDARD VAN ACCESSIBLE PARKING SPACE & ONE LOADING SPACE)</p>		

Tenant Improvement
CANNABIS RETAIL DISPENSARY & DELIVERY
796 Oller St., Mendota, CA 93640
Fresno County

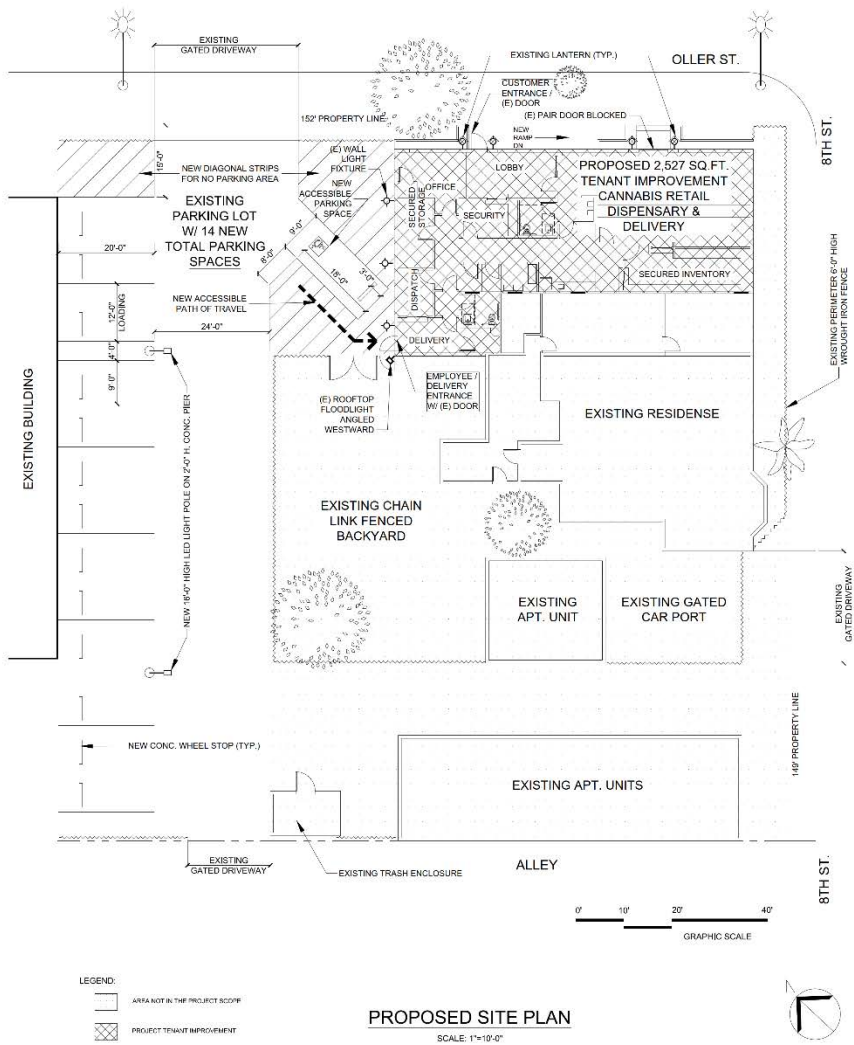
NO.	DATE	REVISION / ISSUE
1	10/07/18	SUBMITTAL - ISSUE APPLICATION
2	10/02/20	RESUBMITTAL - ISSUE APPLICATION

APN 013-191-18
DATE: 10/02/20
SCALE:
SHEET SIZE: 24X36
SHEET NAME:

COVER SHEET

SHEET NO.
A00

ATTACHMENT "A TO RESOLUTION NO. PC 21-02
 SITE PLAN FOR APPLICATION NO. 20-22



ELEMENT 7

**Tenant Improvement
 CANNABIS RETAIL
 DISPENSARY & DELIVERY**
 796 Oller St., Mendota, CA 93640
 Fresno County

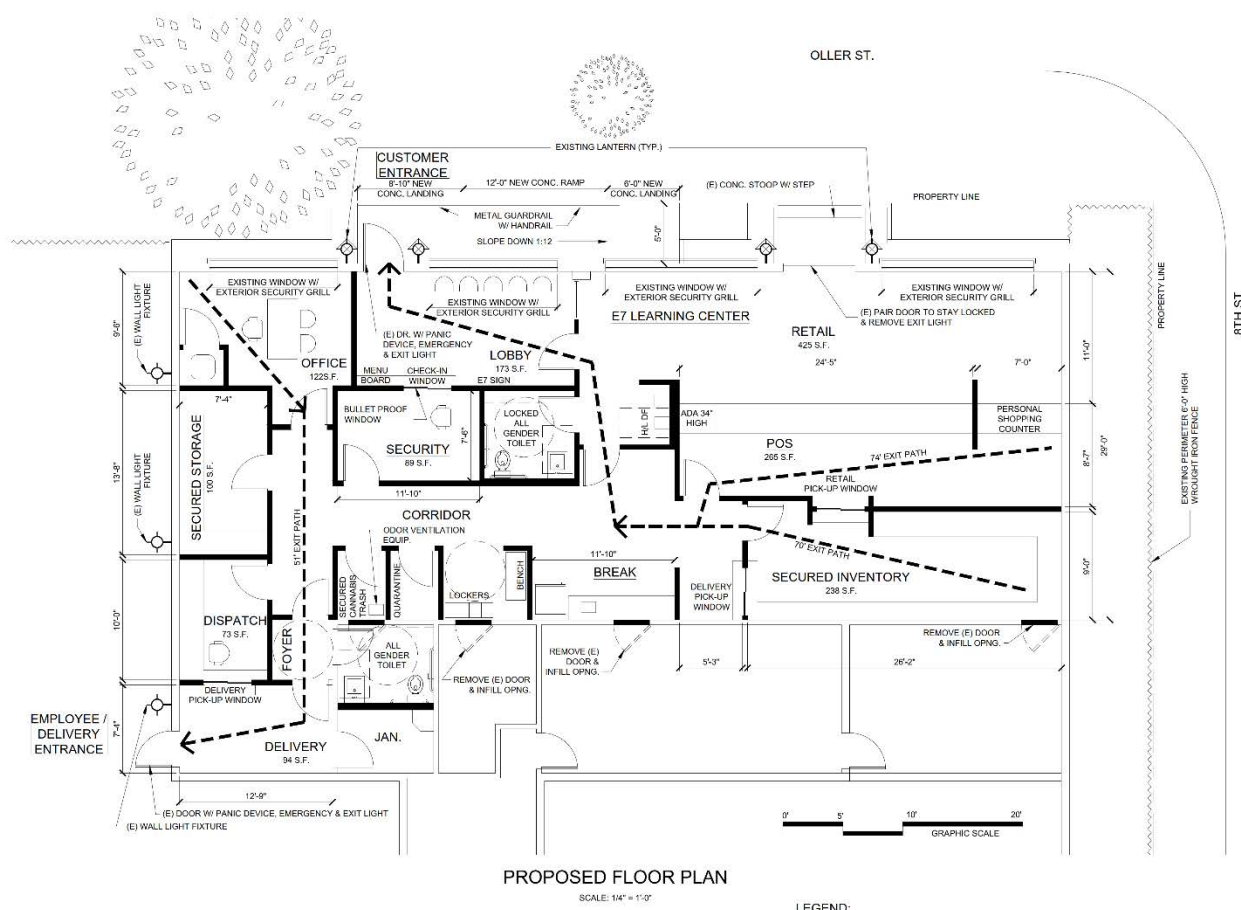
NO.	DATE	REVISION / ISSUE
1	12/07/19	SUBMITTAL - PRE APPLICATION
2	10/02/20	RESUBMITTAL - BUSINESS LICENSE APPLICATION

APN 013-191-18
 DATE: 10/02/20
 SCALE: 1" = 10'-0"
 SHEET SIZE: 24X36
 SHEET NAME:

**PROPOSED
 SITE PLAN**

SHEET NO.
A01

**ATTACHMENT "A TO RESOLUTION NO. PC 21-02
SITE PLAN FOR APPLICATION NO. 20-22**



**Tenant Improvement
CANNABIS RETAIL
DISPENSARY & DELIVERY**
796 Oller St., Mendota, CA 93640
Fresno County

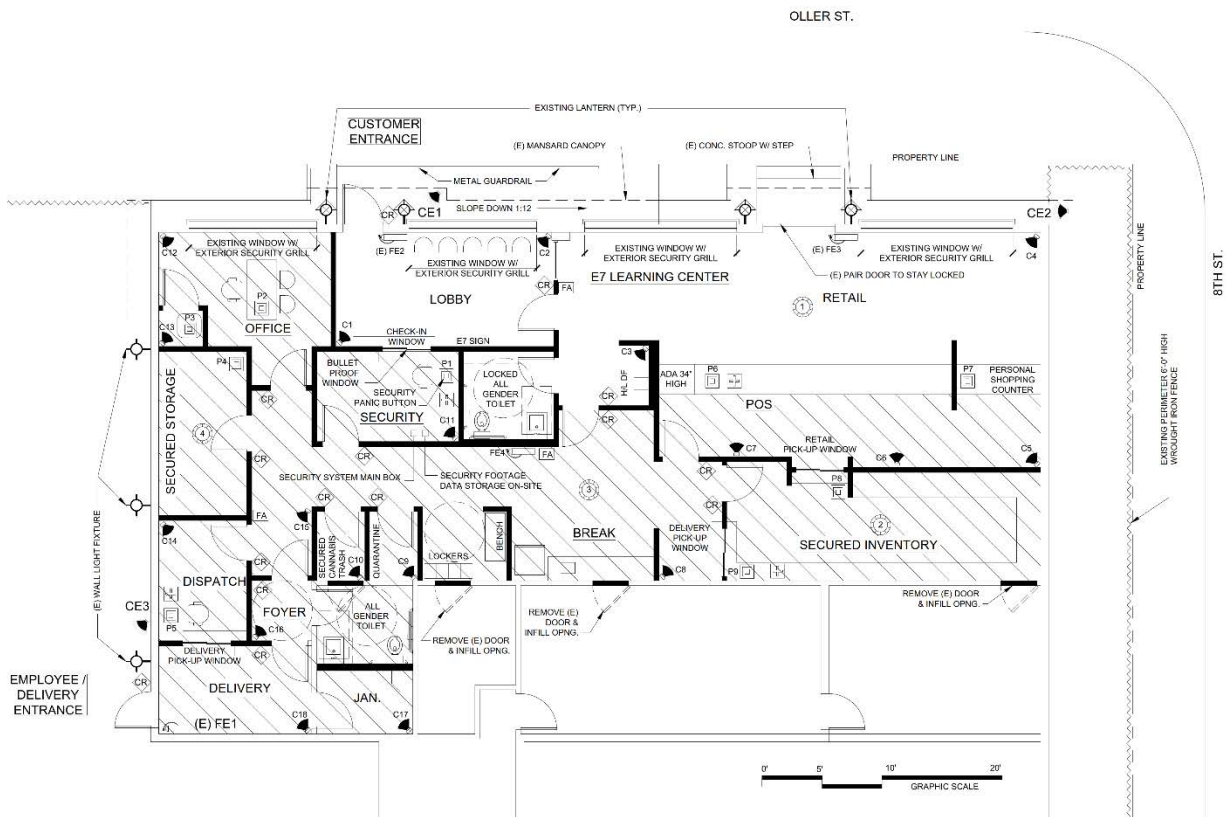
NO.	DATE	REVISION / ISSUE
1	10/27/19	SUBMITTAL - PRE APPLICATION
2	10/29/20	RESUBMITTAL - PRE APPLICATION

DATE: APR 013-191-18
 DATE: 10/02/20
 SCALE: 1/4" = 1'-0"
 SHEET SIZE: 24X36
 SHEET NAME:

PROPOSED FLOOR PLAN

SHEET NO.
A02

ATTACHMENT "A TO RESOLUTION NO. PC 21-02
SITE PLAN FOR APPLICATION NO. 20-22



PROPOSED SECURITY CAMERA FLOOR PLAN

SCALE: 1/4" = 1'-0"

NOTES:
1. SENSORS SHALL BE INSTALLED TO DETECT ENTRY AND EXIT FROM ALL SECURED AREAS.

- LEGEND:
- LIMITED INTERIOR ACCESS AREA
 - EXTERIOR SECURITY CAMERA (CE1-3)
 - INTERIOR SECURITY CAMERA (CI-15)
 - INTERIOR SECURITY CAMERA-W/DIGREE (I-1)
 - SECURITY PANIC BUTTON (P1-R)
 - ACCESS CONTROL W/ SECURITY CARD READER
 - PORTABLE FIRE EXTINGUISHER (PE-1-2)
 - FIRE ALARM
 - FIRST AID



PROJECT:
Tenant Improvement
CANNABIS RETAIL
DISPENSARY & DELIVERY
796 Oller St., Mendota, CA 93640
Fresno County

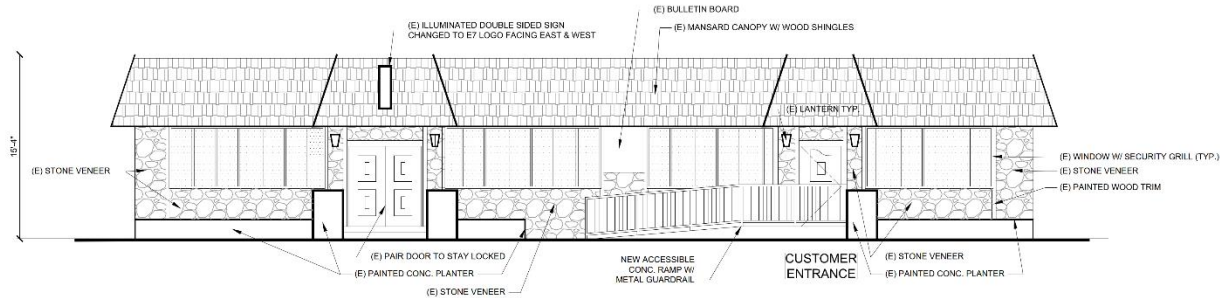
NO.	DATE	REVISION / ISSUE
1	10/27/19	SUBMITTAL - ISSUE APPLICATION
2	10/29/20	RESUBMITTAL - ISSUE APPLICATION

DATE: APR 013-191-18
DATE: 10/02/20
SCALE: 1/4" = 1'-0"
SHEET SIZE: 24X36
SHEET NAME:

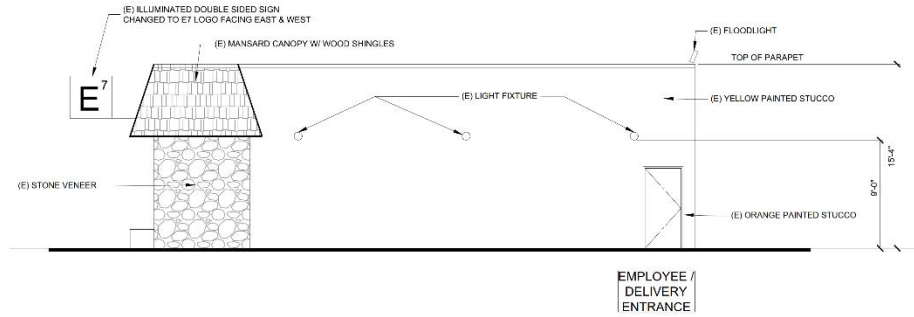
PROPOSED SECURITY CAMERA PLAN

SHEET NO.
A03

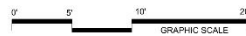
ATTACHMENT "A TO RESOLUTION NO. PC 21-02
SITE PLAN FOR APPLICATION NO. 20-22



PROPOSED EXTERIOR NORTH ELEVATION - OLLER ST.



EXISTING EXTERIOR WEST ELEVATION - PARKING LOT



PROJECT
Tenant Improvement
CANNABIS RETAIL
DISPENSARY & DELIVERY
 796 Oller St., Mendota, CA 93640
 Fresno County

NO.	DATE	REVISION / ISSUE
1	10/27/19	SUBMITTAL ISSUE APPLICATION
2	10/02/20	RESUBMITTAL - RESUBMITTAL ISSUE APPLICATION

APN 013-191-18
 DATE 10/02/20
 SCALE 1/4" = 1'-0"
 SHEET SIZE 24X36
 SHEET NAME

EXISTING & PROPOSED EXTERIOR ELEVATIONS

SHEET NO.

A04

ATTACHMENT "B" TO RESOLUTION NO. PC 21-02
CONDITIONS OF APPROVAL
APPLICATION NO. 20-22; 796 OLLER STREET (APN 013-191-18)
ELEMENT 7 MENDOTA 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 operator shall comply with the provisions of the Operational Statement and Security Plan received by the City October 7, 2020 and incorporated herein by reference.
5. 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

6. This conditional use permit shall not become operative until recordation of a development agreement pursuant to MMC Section 8.37.050(1).
7. The conditional use permit detailed within Application No. 20-22 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 C-3 Central Business and Shopping 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. Development of the project site shall be in substantial conformance with the Site Plan dated October 2, 2020 as incorporated herein, except as modified by these conditions. 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.
12. 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.
13. 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.
14. 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.
15. 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 PM₁₀ Prohibitions) and Rule 9510 (Indirect Source Review).
16. 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.
17. 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.
18. At minimum, the accessible area of the parking and circulation area shall be reconstructed as necessary to comply with Chapter 11B of the California Building Code.

19. At minimum, the remainder of the parking and circulation area shall be sealed prior to striping.
20. 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.
21. 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.
22. 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.
23. 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.
24. Hours of construction shall be limited to 6:00 AM to 7:00 PM, Monday through Saturday.
25. Construction debris shall be contained within an on-site trash bin and the project site shall be watered for dust control during construction.
26. Any non-structural fencing shall be subject to approval by the Community Development Department consistent with Standard Drawing Nos. M-3 through M-7.
27. The applicant shall comply with all relevant components of the California Building Code and associated trade codes.
28. All signage must be approved pursuant to the standards and guidelines of the Mendota Municipal Code prior to installation.
29. 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.
30. 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.
31. 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.

32. The applicant shall comply with the City of Mendota Cross-Connection Control Regulations contained within MMC Section 13.24.
33. The applicant shall coordinate with the City Engineer and Mid Valley Disposal to establish necessary solid waste procedures and facilities.

Utilities Improvements

34. The site plan shall be revised to illustrate existing water, wastewater, and drainage facilities.
35. The project shall utilize the existing utilities connections. If modifications are proposed, applicant shall consult with and comply with the requirements of the City Engineer.
36. 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.
37. 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.
38. Fire flow conditions are subject to review and approval by the Fresno County Fire Protection District/CAL FIRE.
39. All water meters shall be Badger Model E Series with Nicor Connector (E-Series Ultra Plus for sizes ¾" and 5/8") with Badger Model Orion CMNA-N Cellular Endpoint with Nicor Connector fully loaded with through lid mounting kit
40. The project shall comply with City of Mendota's Automated Water Meter Reading System
41. No sewer laterals are allowed within driveways. All laterals and cleanouts shall be installed per Standard Drawings No. S-7A and M-1.
42. 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

43. Any work within the City of Mendota right-of-way shall require an encroachment permit.
44. Any work within Caltrans right-of-way shall require an encroachment permit.
45. 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.

46. 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.
47. Drive approaches, as necessary, shall be installed consistent with Standard Drawing No. ST-15.

Fees

48. 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.
49. 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.
50. 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.
51. The project is not responsible for payment of development impact fees.

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

**A RESOLUTION OF THE PLANNING COMMISSION RESOLUTION NO. PC 21-03
OF THE CITY OF MENDOTA RECOMMENDING
THAT THE CITY COUNCIL OF THE CITY OF MENDOTA
ENTERS INTO A DEVELOPMENT AGREEMENT WITH
ELEMENT 7 MENDOTA LLC REGARDING COMMERCIAL
CANNABIS ACTIVITIES AS DETAILED IN APPLICATION
NO. 20-22**

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. 20-22, which includes a proposed development agreement for the property located at 796 Oller Street (APNs 013-191-18); and

WHEREAS, as part of Application No. 20-22, approval of a conditional use permit contained was considered and approved by the Planning Commission in part upon the condition that said revisions would not become operative until recordation of a development agreement pursuant to Mendota Municipal Code Section 8.37.060

WHEREAS, the Planning Commission finds that the proposal involves an existing facility and would result in minimal site and building improvements and thus meets the criteria described in CEQA Guidelines Section 15301.

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 20th day of April 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

EXHIBIT "A" TO RESOLUTION NO. PC 21-03
DEVELOPMENT AGREEMENT FOR APPLICATION NO. 20-22

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

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

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 April, 2021, by and between the **CITY OF MENDOTA**, a municipal corporation of the State of California ("City"), and **ELEMENT 7 MENDOTA, LLC**, a California 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 distribution and/or delivery of Cannabis and Cannabis Products, as defined in Section 1.4 of this Agreement, in strict accordance with California

EXHIBIT "A" TO RESOLUTION NO. PC 21-03
DEVELOPMENT AGREEMENT FOR APPLICATION NO. 20-22

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 2,315 square feet of floor space 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 the 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 lessee of or has an equitable interest in the real property located at 796 Oller Street, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-191-18 (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. On June 11, 2019, the City Council adopted Ordinance No. 19-06, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

J. On October 15, 2019, the City published a request for proposals seeking applicants desiring to enter into a development agreement for the development of a commercial cannabis dispensary within the City. In response to this request for proposals, Developer submitted an application for a development agreement pursuant to the requirements of Chapter 17.99 of the Mendota Municipal Code, and the City Council subsequently directed City staff to engage in negotiations with Developer for the same.

K. On September 8, 2020, the City Council adopted Ordinance No. 20-16, establishing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City.

L. On February 23, 2021, the City Council adopted Ordinance No. 21-05 providing additional requirements for the operation and entitlement of commercial cannabis businesses operating within the City, made retroactively effective to the effective date of Ordinance No. 20-16.

M. On _____, 2021, the City Council adopted Ordinance No. 21-XX permitting the operation of additional commercial cannabis retailers within the City's territory.

EXHIBIT "A" TO RESOLUTION NO. PC 21-03
DEVELOPMENT AGREEMENT FOR APPLICATION NO. 20-22

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

O. On _____, 2021, after a duly noticed and held meeting in accordance with Government Code § 65867, the City's Planning Commission voted to recommend approval of Developer's application for a development agreement for the Project.

P. On _____, 2021, the City Council, in a duly noticed and conducted public hearing, and conducted the first reading of proposed Ordinance No. 21-XX.

Q. Pursuant to Government Code section 65867.5, on _____, 2021, the City Council reviewed, considered, adopted, and entered into this Agreement pursuant to Ordinance No. 21-XX.

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.

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

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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:

Designation	Description
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
Exhibit F	Developer's "Community Benefits Plan"

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.
- (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.

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(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 California 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.

(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 Council of the City of Mendota.

(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, sell, or test cannabis or cannabis products as

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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 ELEMENT 7 MENDOTA, 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) "Gross Receipts" shall mean total revenue received or receivable by the Developer or its assignees from any Commercial Cannabis Activity on the Site or from operation of the Project on the Site, including: all sales, whether conducted at the Site or through the Project; the total amount of compensation received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit whether or not such act or service is done as part of or in connection with the sale of materials, goods, wares, or merchandise; and gains realized from trading in stocks or bonds, interest discounts, rents, royalties, fees, commissions, dividends, or other remunerations, however designated. Included in "Gross Receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

(1) Cash discounts allowed and taken on Commercial Cannabis Activity sale;

(2) Any tax required by law to be included in or added to the purchase price of Commercial Cannabis Activity and collected from the consumer or purchaser;

(3) Such part of the sale price of property returned by purchasers in any Commercial Cannabis Activity upon rescission of a contract of sale as is refunded either in cash or by credit; and

(4) Receipts of refundable deposits in any Commercial Cannabis Activity, except that such deposits when forfeited and taken into income of the business shall not be excluded.

The intent of this definition is to ensure that in calculating the payments required under this Agreement, all sales related to Commercial Cannabis Activity or any other cannabis and cannabis products at the Site or through the Project, including, but not limited to, non-storefront sales and

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deliveries, are captured. This definition shall be given the broadest possible interpretation consistent with this intent.

(bb) "Local" or "Locally" mean the area within the territory of the City of Mendota, and its neighboring locales within the County of Fresno.

(cc) "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.

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

(ee) "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.

(ff) "MCRSA" has the meaning set forth in Recital A.

(gg) "Ministerial Fee" or "Ministerial Fees" has the meanings set forth in Section 4.1.

(hh) "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.

(ii) "Mortgage" has the meaning set forth in Article 7.

(jj) "Non-Performance Penalty" has the meaning set forth in Section 4.5.

(kk) "Notice of Non-Performance Penalty" has the meaning set forth in Section 4.5.

(ll) "Notice of Termination" has the meaning set forth in Section 9.1.

(mm) "Processing Costs" has the meaning set forth in Section 1.11.

(nn) "Project" has the meaning set forth in Recital D.

(oo) "Project Litigation" has the meaning set forth in Section 10.7.

(pp) "Public Benefit Fees" has the meaning set forth in Section 4.2.

(qq) "Public Benefit Amount" has the meaning set forth in Section 4.2.

(rr) "Site" has the meaning set forth in Recital G.

(ss) "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.

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(tt) "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.

(uu) "Subsequent City Approvals" has the meaning set forth in Section 3.1.

(vv) "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.

Section 1.6. Effective Date of Agreement. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective (the "Effective Date").

Section 1.7. Term. The "Term" of this Agreement is ten (10) years from the Effective Date, unless terminated or extended 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's 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 for a period of up to three (3) months 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

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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.

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 Five Thousand Five Hundred and Twenty Dollars (\$5,520) 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. To the extent Developer's deposit outlined above is insufficient to cover the City's Processing Costs, Developer shall provide City with additional deposits, as necessary, sufficient to reimburse the City's unpaid Processing Costs within thirty (30) days of receiving an invoice from the 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.

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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)
Non-Storefront Retailer	9
Dispensary; General	10
Dispensary; No More Than Three Retail Sites	10A

Developer or its 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 assignees are applying for the Authorized License with the applicable State Licensing Authority. Notwithstanding the foregoing, Developer or each of its 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 assignees, Developer or the assignee that was denied a license shall immediately cease Commercial Cannabis Activity on the Site. Developer or its 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, or any such license is revoked, terminated, or suspended, Developer or its assignees shall immediately cease operations at the Site. In this situation, this Agreement shall terminate immediately. For the purposes of clarification, a denial or rejection of Developer's or assignee's Authorized License shall not result in the termination of this agreement provided: (i) other Authorized Licenses have been issued to Developer or its assignees; or (ii) Developer or its 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 one or more of the license types then authorized by the California Cannabis Laws to the Authorized Licenses. If City Council allows any additional Authorized Licenses ("**Additional Licenses**"), City Council shall make a finding of whether Developer's or its 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

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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.

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.

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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 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.

Section 2.13 Necessary Improvements. Developer shall make the following necessary improvements to the Site prior to conducting business thereon:

(a) The City has determined the current number of "off-street" parking spaces (17) is inadequate because those spaces are shared or used by neighboring apartment buildings. Developer must propose a plan to ensure enough parking spaces to mitigate the number of customers parking on the street as determined by the City's traffic engineer, in his or her professional judgment.

(b) The City has determined that the egress alleyway, though not part of the parcel, would be inadequate for egress from the Site. Developer must propose a plan to improve the egress

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alleyway to improve the egress from the Site, which shall be considered for approval by the City's traffic engineer, in his or her professional judgment.

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 and the Mendota Municipal Code as it existed on the Effective Date, 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.

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.

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(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 Amount"):

(i) The applicant agrees to pay an annual fee, to be paid on the First (1st) business day of every Third (3rd) month, based on the total square footage of the developed portions of the Site ("Square Footage Payment") in an amount as follows:

i Five dollars (\$5.00) per square foot of the Site.

(ii) An annual payment in the greater of the following amounts:

i Fifty Thousand Dollars (\$50,000) ("Flat Rate Payment"), to be paid in quarterly installments of Twelve Thousand Five Hundred Dollars (\$12,500) on the First (1st) business day of every Third (3rd) month after operations have begun on the Site; or

ii Three percent (3%) of Developer's yearly Gross Receipts ("Gross Receipts Payment") from the Project, to be paid in quarterly installments on the First (1st) business day of every Third (3rd) month after operations have begun on the Site, to be calculated as follows:

1 For Developer's first (1st) year of operation, an estimated Three Million Dollars (\$3,000,000.00) in Gross Receipts equates to Ninety Thousand Dollars (\$90,000.00) annually, paid in the amounts of Twenty-Two Thousand Five Hundred Dollars (\$22,500.00) each quarter.

2 Not later than thirty (30) days after the close of each fiscal year, City shall retain and pay a third-party auditing company, the costs of which shall be fully reimbursed to City by Developer, to fully and completely audit Developer's financial records for the preceding year. In the event the preceding years' Gross Receipts were lower than outlined above, any amount overpaid by Developer shall be offset against Developer's next Gross Receipts Payment. In the event the preceding year's Gross Receipts were higher than outlined above, Developer shall pay the difference owed City with Developer's following Gross Receipts Payment. This pattern shall continue for the Term of this Agreement.

(b) Developer shall remit the Square Footage Payment, Flat Rate Payment, and Gross Receipts Payment, as applicable, to City as described in subdivision (a) of this section. Failure to remit the Square Footage Payment, Flat Rate Payment, and/or Gross Receipts Payment, as applicable, is a material breach of this Agreement.

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(c) In addition to the Public Benefit Amount, Developer shall also perform to support the following Community Benefit Programs, as more particularly outlined in Exhibit F, to benefit the City and its residents:

(i) Developer shall use its best efforts to ensure eighty percent (80%) of its employees are hired from the Local area. Developer agrees to use its best efforts to promote the hiring and employment of Local residents to construct, if necessary, operate the business 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 residents for its business;

(ii) Developer shall use its best efforts to ensure seventy-five percent (75%) of Developer's building, construction, equipment, repairs, and maintenance needs shall be serviced by Local businesses or individuals, with a minimum of Three Hundred Thousand Dollars (\$300,000.00) spent Locally during the first (1st) year of operations at the Site and, following the first (1st) year of operations at the Site, Three Thousand Dollars (\$3,000.00) spent Locally per month for the remainder of the Term of this Agreement;

(iii) After Developer obtains a business license from the City, Developer shall commit Fifty Thousand Dollars (\$50,000.00) annually to the ELEMENT 7 CARES program for the purpose of actively building and creating facilities that contribute towards Local community development;

(iv) Developer shall develop and implement Local outreach and education efforts to build good will within the City, as more particularly described in Exhibit F, including, but not limited to:

i Designating one of Developer's Senior Managers as its Community Relations Officer;

ii During Developer's first (1st) year of operations at the Site, the Senior Manager designated as Developer's Community Relations Officer shall attend quarterly meetings with the City to discuss costs, benefits, and other community issues;

iii Developer's representatives personally visiting each business in a five hundred (500) foot radius of the Site within twenty-one (21) days of being awarded a conditional use permit for the Project;

iv Creating and utilizing an email database of all businesses within a five hundred (500) foot radius of the Site and sending them a bi-annual email offering news of the cannabis industry and Developer's business, asking for proactive feedback on better business and community relations, and providing the name and phone number of Developer's Community Relations Manager;

v Inviting Local businesses to attend a Business Feedback and Community Management Forum twice (2) each year, which will be hosted at a suitable venue in

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the proximate Local area. Additionally, City residents within five hundred (500) feet of Element 7 shall also be invited to attend these forums and receive Developer's Community Relations Officer's contact information; and

vi Creating a dedicated email address for priority feedback regarding Developer's operations and circulating that email address to each business in the five hundred (500) foot radius of the Site within twenty-one (21) days of being awarded a conditional use permit.

(v) Developer shall create and implement Local community educational outreach events and partnerships with non-profit organizations, municipal agencies, and neighborhood groups centered on the medicinal qualities of cannabis to be held quarterly each year for the entirety of the Term of this Agreement;

(vi) Developer shall create and implement a Staff Volunteer Program, wherein its full-time employees shall be required to commit at least ten (10) hours quarterly to a Local cause or charity;

(vii) Developer shall create and implement a Medical Cannabis Discount Program, wherein Developer shall provide assistance to seniors, retired veterans, HIV and AIDS patients, children diagnosed with autism, epileptics, terminally ill patients, low-income customers on government assistance, and the like, with access to discounted medical cannabis;

(viii) Developer shall create and implement the E7 ONE program, wherein Developer shall create a Social Equity and Local Enterprise Board to oversee the development and implementation of Developer's social equity policies and practices. This Social Equity and Local Enterprise Board shall, at least once (1) per year, produce a report that assesses workplace demographics and other program performance indicators for use in achieving the E7 ONE program's specified goals and social equity outcomes. Where the Social Equity and Local Enterprise Board's analysis indicates persons from underrepresented or disadvantaged populations are not sufficiently represented in Developer's workforce, the Social Equity and Local Enterprise Board shall develop new strategies to fulfill Developer's commitments to diversity and inclusivity; and

(ix) Developer shall, at least annually, host Expungement Clinics in partnership with the Fresno County Public Defender's Office and/or the National Diversity and Inclusion Cannabis Alliance to provide Local residents with minor drug-related criminal records to obtain free legal support in seeking expungement of said minor offenses from their criminal records.

(d) Developer shall prepare a written report explaining the progress of each of the Community Benefit Programs to be delivered to the City Council within sixty (60) days of the conclusion of each fiscal year. Said written report shall include financial records relating to any Community Benefit Program endeavor that required a certain sum of money to be spent. Said financial records shall be included in the annual third-party audit provided for in Section 4.2(a)(2)(B)(2), above.

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(e) In the event Developer fails to develop, implement, create, or otherwise continue any of the Community Benefit Programs outlined in Section 4.2(c), above, upon which City has relied in good faith in extending this Agreement, Developer shall be found to be in breach of this Agreement and City may exercise any right contained in the Agreement to remedy the breach.

Section 4.3. Reporting. Developer shall provide City with copies of Authorized Licenses issued by a State Licensing Authority to Developer or its assignees within forty-five (45) calendar days of issuance of such license to any assignee and each annual renewal thereafter ("State Licenses"). Developer shall also provide City with a written report documenting Developer's performance of its duties in accordance with Section 4.2(c)(1) 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 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 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.

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Section 4.7. Exempt from City Tax. For the Term of this Agreement and except as otherwise provided herein, 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. 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 4.8 shall constitute a material breach of this Agreement.

Section 4.9. 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 4.10. Site Beautification. Upon the full execution of this Agreement, Developer shall spend 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 residents to complete this Site beautification 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 that are 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

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(\$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 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.

(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

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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.

(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.

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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 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"). Prior to the Effective Date, Developer shall secure subordination agreements from any person who as recorded a deed of trust or other lien against the Site. 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

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of termination of this Agreement or institution of legal proceedings for the breach of this Agreement.

(b) After expiration of the 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, Developer shall use commercially reasonable efforts to bring the person or entity in default into compliance. The City shall provide 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

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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 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

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this Agreement shall be of no further force or effect except as otherwise set forth in this Agreement.

Section 9.2. Effect of Termination on Developer's 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. Developer Compliance with Amendment In Lieu Of Termination. At the City's election, in the event Developer is in default of this Agreement and is unable to pay monetary amounts due City hereunder to cure said default within the applicable Cure Period, Developer shall comply with City's efforts to amend this Agreement to substitute Developer for another party which intends to take over Developer's future operations of the Project and obligations under this Agreement.

Section 9.5. Survival After Termination. The rights and obligations of the Parties set forth in this Section 9.5, 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

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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 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: ELEMENT 7 MENDOTA, LLC
645 West 9th Street
Unit #110-631
Los Angeles, CA 90015
Attention: Robert M. DiVito, Jr.

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And to: ELEMENT 7 LLC
4612 Glencoe Avenue, #4
Marina Del Rey, CA 90292
Attention: Sheila Merchant 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 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

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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 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.

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(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. 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,

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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.

(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.

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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: _____, 2021

Date: _____, 2021

CITY OF MENDOTA, CA
a California Municipal Corporation

ELEMENT 7 MENDOTA, LLC, a California
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 ELEMENT 7 MENDOTA, LLC ("Developer"), for the development of real property located at 796 Oller 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 ELEMENT 7 MENDOTA, LLC ("Developer") for the development of property located at 796 Oller 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"), **ELEMENT 7 MENDOTA, LLC**, a California 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 _____, 2021, for the development of property located at 796 Oller Street, in the City of Mendota, County of Fresno, State of California, Assessor's Parcel Number 013-191-18 ("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

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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: _____, _____
ELEMENT 7 MENDOTA, LLC, a California
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)

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Exhibit F

Community Benefit Plan

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