

Recording requested by and  
When recorded return to:

City of Merced, a California Charter  
Municipal Corporation  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

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(Space Above For Recorder's Use)

(RECORD AT NO FEE PURSUANT TO  
CA GOVERNMENT CODE SECTION 27383)

**AGREEMENT FOR USE OF CITY RIGHT OF WAY**

THIS AGREEMENT FOR USE OF CITY RIGHT OF WAY ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between MAINZER OB, LLC, a Delaware Limited Liability Company ("Owner") and the CITY OF MERCED, a California Charter Municipal Corporation ("City"). Owner and City are sometimes referred to collectively herein as the "Parties" and individually as a "Party."

**RECITALS:**

The following recitals are a substantive portion of this Agreement:

A. Owner holds a leasehold interest in that certain real property at and commonly known as 655 West Main Street, Merced, California, APN 031-133-013, and more specifically described on the attached Exhibit "A" (the "Property").

B. City holds a public service easement as described on the attached Exhibit "B" (the "City Right of Way").

C. The Owner desires to construct and maintain certain improvements within the City Right of Way, including a grease interceptor, including necessary plumbing, and overhead signage as described on Exhibit "C" and delineated on Exhibit "D" (the "Encroachments").

**NOW, THEREFORE**, in furtherance of the foregoing Recitals, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner and City hereby agree as follows:

1. Grant of Encroachment and Nature of Agreement. City grants Owner permission to construct and maintain certain improvements within the City Right of Way, as set forth more specifically in Exhibit "C" attached hereto. In so doing, and notwithstanding anything to the contrary in this Agreement, or pursuant to the course of dealings between the Parties, City expressly does not and shall not abandon the City's Right of Way or waive any rights thereunder, and Owner, its heirs, successors, and assigns derive no basis for a claim of prescriptive, contractual, or other rights to maintain the Encroachments or otherwise utilize the City Right of Way. This grant of permission does not constitute a deed or grant of an easement or any other real property interest by the City.

2. Term of Easement. Either Party may terminate this Agreement with or without cause upon one hundred twenty (120) days advance written notice to the other Party. If the City vacates the City Right of Way in accordance with California law, then this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement, the Owner shall remove all Encroachments from the City's Right of Way and restore the City Right of Way back to its natural state existing prior to use by the Owner.

3. Use of City Right of Way. This grant of permission shall be subject to and subordinate to the prior continuing right of the City to use the Property for public services. Any Encroachments shall not interfere with the City's existing utilities.

4. Damage to City Right of Way. Owner shall be solely responsible for any damage to City streets, sidewalks, curbs, utilities, or other City owned property due to the installation, maintenance, repair, or removal of its Encroachments in the City Right of Way, and shall repair, replace, and restore in kind the said damaged facilities at its sole expense.

5. Maintenance of Encroachments. Owner shall be solely responsible for any maintenance and/or repairs to the Encroachments. Owner shall maintain the Encroachments and surrounding area in good and safe condition and free from damage, to the reasonable satisfaction of the City.

6. Hazardous Materials. Owner agrees that Owner shall not bring onto the City Right of Way, or store or dispose of on the City Right of Way, nor knowingly allow others to bring onto, store or dispose on the City Right of Way, any hazardous material of any kind.

7. Insurance Requirements. Owner shall maintain a Commercial General Liability insurance policy against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such liability insurance available to Owner under Owner's combined insurance policies (including any excess or "umbrella" policies) actually maintained by Owner, whichever is greater.

7.1 The City, its officers, officials, employees, agents, and volunteers, are to be covered as additional insureds on Owner's Commercial General Liability insurance policy.

7.2 Owner waives any and all rights of subrogation relating to property damage against the City and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers, which any insurer of Owner may acquire against the City.

7.3 For any and all claims related to this Agreement, Owner's insurance shall be primary non-contributing.

7.4 Owner shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Owner's agreement with the City shall be canceled or materially changed except after thirty (30) days' notice by the insurer to City. Certificates, including renewal certificates, may be mailed or delivered to the City at 678 W. 18<sup>th</sup> Street, Merced, California 95340.

8. Defense and Indemnification. Owner shall indemnify, protect, hold harmless, and defend the City from any and all loss, cost, liability or expense, and from any judgments or damages to any person or property

arising or resulting from the condition of the Encroachments, or in connection with the installation and/or maintenance of the Encroachments.

9. Representations and Warranties. The Owner hereby represents and warrants that Owner has full power and authority to execute and deliver this Agreement and to make and accept the obligations contemplated hereunder.

10. Compliance With Laws. Each of the Parties shall at all times comply fully with all applicable governmental laws, ordinances, rules, codes, regulations, and permit requirements pertaining to the use of the City Right of Way and maintenance and repair of the Interceptors.

11. Waiver. The failure of any of the Parties or their successors to enforce any of the terms and provisions set forth herein shall not constitute a waiver of the right to enforce the same thereafter.

12. Entire Agreement. This Agreement constitutes the entire integrated agreement of the Parties with respect to the subject matter of this Agreement. This Agreement may not be amended or terminated except by a writing signed by authorized signatories of all Parties.

13. Construction. The section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Wherever the context hereof may so require, the singular shall include the plural and the masculine shall include the feminine and neuter. This Agreement shall be interpreted pursuant to its plain and ordinary meaning, as though prepared by both Parties, and in accordance with the laws of the State of California.

14. Successors and Assigns. The rights and obligations of the Parties hereunder shall be binding on and inure to the benefit of the Parties hereto and the successors and assigns of the Parties hereto. These obligations shall run with the land.

15. Recordation of Agreement. Any of the Parties may cause this Agreement or a memorandum thereof to be recorded in the Office of the County Recorder of Merced County, California.

16. Governing Law and Venue. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any legal action arising out of this Agreement shall be the Superior Court of the County of Merced, California.

17. Attorneys' Fees. Should it become necessary to take steps to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its attorneys fees and costs related to the enforcement of this Agreement.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have made and executed this Agreement on the day and year first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Prudence A. [Signature] 5/6/01  
City Attorney Date

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
City Attorney                      Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

OWNER:  
MAINZER OB, LLC,  
a Delaware Limited Liability Company  
By: Hallmark Realty  
Its: Authorized Signatory

BY: \_\_\_\_\_  
Mark J. Len, President

DATE: \_\_\_\_\_  
6/2/21

SEE ATTACHED NOTARY CERTIFICATE

## ACKNOWLEDGMENT

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

State of California  
County of Placer

On 06/02/2021 before me, K Castueras, Notary Public  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature



(Seal)



## ACKNOWLEDGMENT

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

State of California

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## EXHIBIT "A"

### LEGAL DESCRIPTION

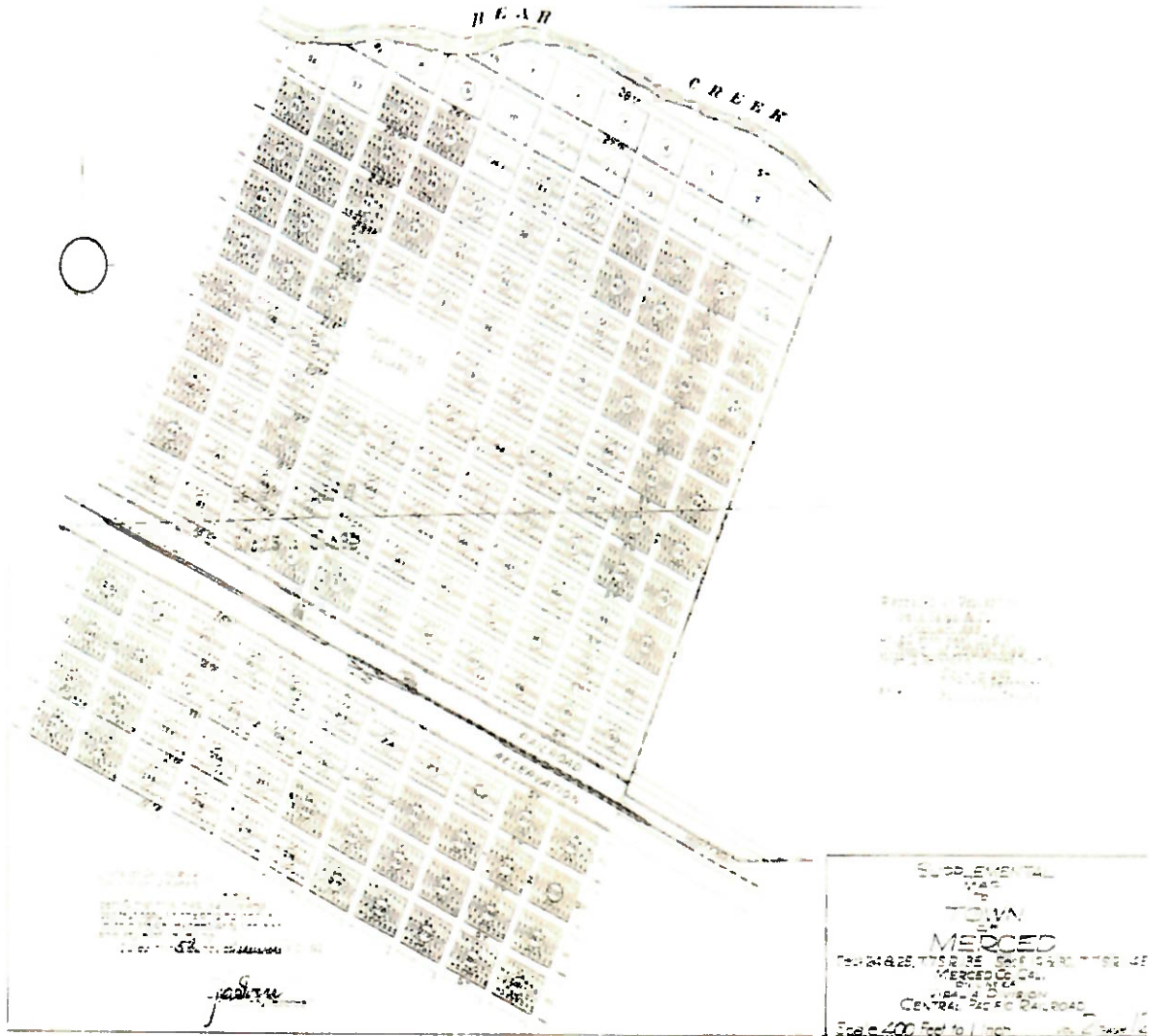
Real property in the City of Merced, County of Merced, State of California, described as follows:

LOT 9 AND THE NORTHWESTERLY HALF OF LOT 10, IN BLOCK 164, SUPPLEMENTAL MAP TO TOWN OF MERCED, IN THE CITY OF MERCED, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 2 OF MAPS, PAGE 12, RECORDS OF SAID COUNTY.

THE ABOVE LEGAL DESCRIPTION IS PURSUANT TO THAT NOTICE OF MERGER OF LOTS RECORDED NOVEMBER 10, 1992, AS INSTRUMENT NO. 1992-40521, OF OFFICIAL RECORDS.

APN: 031-133-013

# EXHIBIT "B"

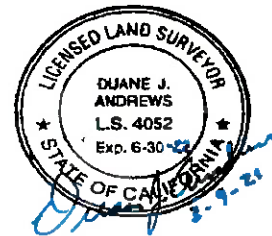


# EXHIBIT "C"

## Seating Area No. 1: Main Street Description

Commencing at the Southwest Corner of Lot 9 of Block 164, shown on Supplemental Map to Town of Merced as recorded in Volume 2 of Official Plats at Page 12, Merced County Records, said corner being on the North Right of Way line of a city street now known as Main Street, thence S. 65°20'00" E., along the South line of said Lot 9 and said Main Street North line Right of Way, a distance of 5.00 feet, to the POINT OF BEGINNING, thence continuing S. 65°20'00" E., along said Lot 9 South line and the South Line of Lots 10 and 11 and said Main Street North Line Right of Way a distance of 102.00 feet, thence S. 24°40'00" W., leaving said Main Street North Right of Way line, a distance of 25.00 feet, thence N. 65°20'00" W., parallel with and 25.00 feet South of said Main Street North Right of Way line, a distance of 58.00 feet, thence N. 24°40'00" E., a distance of 1.00 feet, thence N. 65°20'00" W., parallel with and 24.00 feet South of said Main Street North Right of Way line, a distance of 44.00 feet, thence N. 24°40'00" E., a distance of 24.00 feet to the point of beginning.

Area Containing: 2,506 sq. ft. more or less



'N' STREET

SOUTHWEST CORNER  
IN S. T. R. 12  
-POINT OF COMMENCEMENT

N 24°40'00" E  
24.00'

N 65°20'00" E  
44.00'

N 65°20'00" W  
58.00'

N 24°40'00" W  
25.00'

MARKED  
STAKES

S 65°20'00" E  
110.00'

12.15'

GRANT DEED  
2015-015489

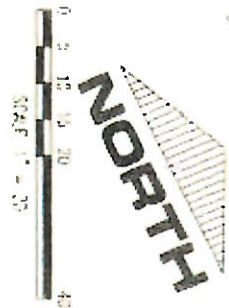
EXHIBIT 'B'

LOT 9  
2 OF 12

LOT 10

LOT 11  
2 OF 12

LOT 12  
2 OF 12



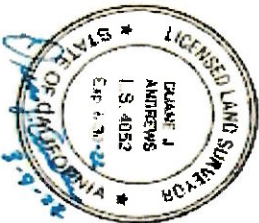
11100 E. 110th St., Suite 100, Golden, CO 80401  
303.426.1234  
www.goldenvally.com

Map No. 2015-015489 Date: 11/11/2015

MAIN STREET

EXHIBIT 'B'

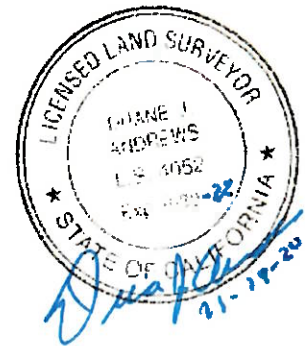
One Bear Design Area No. 1 Main Street



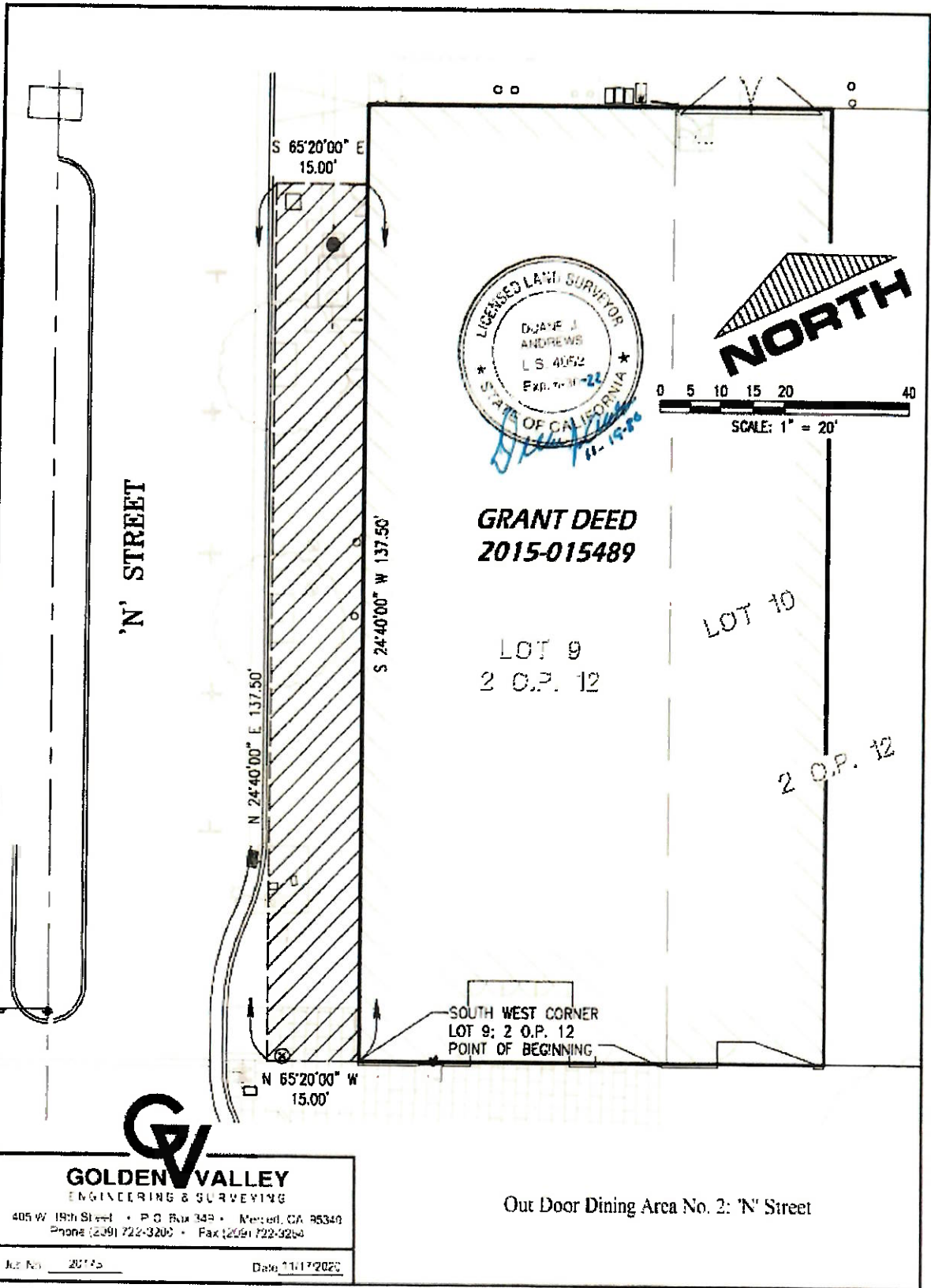
Seating Area No.2: 'N' Street Description

Beginning at the South West Corner of Lot 9 of Block 164, shown on Supplemental Map to Town of Merced as recorded in Volume 2 of Official Plats at Page 12, Merced County Records, said corner being on the North Right of Way line of a city street now known as Main Street and the East Right of Way line of a City Street now known as 'N' Street, thence N. 65°40'00" W., a distance of 15.00 feet, thence N. 24°40'00" E., parallel with and 15.00 feet West of the West line of said Lot 9 and 'N' Street East Right of Way line, a distance of 173.50 feet, thence S. 65°20'00" E., a distance of 15.00 feet, to a point on the West property line of said Lot 9 and the East Right of Way line of said 'N' Street, thence S. 24°20'00" W. along the West property line of said Lot 9 and the East Right of Way line of said 'N' Street, a distance of 137.50 feet to the point of beginning.

Area Containing: 2,063 sq. ft. more or less



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0 5 10 15 20 40  
SCALE: 1" = 20'

**GRANT DEED  
2015-015489**

LOT 9  
2 O.P. 12

LOT 10

2 O.P. 12

SOUTH WEST CORNER  
LOT 9; 2 O.P. 12  
POINT OF BEGINNING

**GOLDEN VALLEY**  
ENGINEERING & SURVEYING

405 W. 19th Street • P.O. Box 349 • Merced, CA 95349  
Phone (209) 722-3200 • Fax (209) 722-9250

Job No. 20173

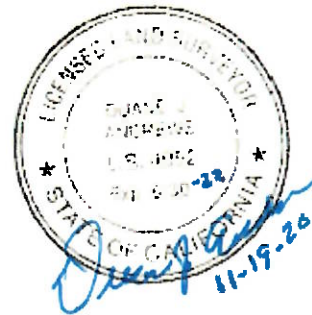
Date 11/17/2020

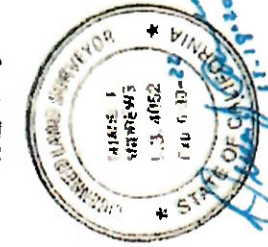
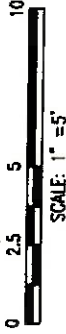
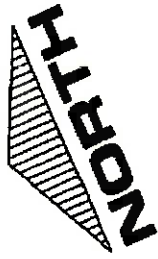
Out Door Dining Area No. 2: 'N' Street

### City Alleyway Description

Beginning at the North East corner of Grant Deed Document No. 2015-015489, said corner being on the South Right of Way line of a 20.00 foot wide city Alley Way, thence N.  $65^{\circ}20'00''$  W., along said Grant Deed North line and the South Right of Way line of said City Alley Way, a distance of 25.00 feet, thence N.  $24^{\circ}40'00''$  E., leaving said Grant Deed North line and said City Alley Way South Right of Way line, a distance of 4.25 feet, thence S.  $65^{\circ}20'00''$  E., parallel with and 4.25 feet North of said Grant Deed North line and said City Alley Way South Right of Way line, a distance of 25.00 feet, thence S.  $24^{\circ}40'00''$  W., a distance of 4.25 feet to the point of beginning.

Area Containing: 106 sq. ft. more or less





20' WIDE CITY ALLEY  
RIGHT OF WAY

S 65°20'00" E 25.00'

N 65°20'00" W 25.00'

S 24°40'00" W 4.25'

NORTH EAST CORNER  
GRANT DEED DOC. No.  
2015-015489, M.C.R.  
POINT OF BEGINNING

2 O.P. 12

LOT 10

LOT 9 12  
2 O.P. 12  
GRANT DEED  
2015-015489



<b>GOLDEN VALLEY</b> ENGINEERING & SURVEYING	
405 W. 19th Street • P.O. Box 349 • Merced, CA 95340	
Phone (209) 722-3700 • Fax (209) 722-3754	
Job No. 20173	Date 11/17/2020

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

OWNER:  
MAINZER OB, LLC,  
a Delaware Limited Liability  
Company

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_