

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

(Above for Recorder's Use Only)

DEVELOPER AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____ 2015, by and between the City of Merced, a California Charter Municipal Corporation ("City") and Shemoil Moradzadeh ("Owner").

W I T N E S S E T H

WHEREAS, Owner has applied to the City for General Plan Amendment #15-02 and Site Utilization Plan Revision #18 to Planned Development (P-D) #4 (the Entitlements") for approximately 0.92 acre parcel generally located at the southeast corner M Street and Olive Avenue, and as legally described on Exhibit "A" and shown on the map at Exhibit "B," attached hereto and incorporated herein by this reference; and,

WHEREAS, City is willing to consider Owner's request provided that certain conditions are met; and,

WHEREAS, Owner is willing to enter into this Developer Agreement should the Entitlements be approved or conditionally approved by the City.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, and for other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

1. Owner, for himself and all successors thereto, agrees to pay all City and school district fees, taxes, and/or assessments in effect on the date of subdivision and/or permit approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time building permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc., and to comply with the additional conditions set forth in Planning Commission Resolution #3052, Exhibit “C,” attached hereto and incorporated herein by this reference. Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

2. Owner desires to comply with the conditions of approval set forth on Exhibit “C” and within this Agreement and acknowledges that the conditions are necessary to mitigate the environmental impact caused by Owner’s development or are necessary to offset the costs to the City generated by Owner’s development including sewer connection costs pursuant to Chapter 15.16 of the Merced Municipal Code.

3. Owner agrees to pay all sewer connection costs imposed by the City as delineated in Section 15.16.070 of the Merced Municipal Code and to pay all other costs required by Chapter 15.16 of the Merced Municipal Code.

4. The Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and its/their officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments

(hereinafter “Claims”) against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul the approval of the Entitlements by the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the Entitlements. Furthermore, Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which Owner’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the Owner of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the Owner shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

5. City, on its part, agrees to approve the Entitlements in accordance with Exhibit “D.”

6. No building permit or other permit shall be issued that is not in compliance with this Agreement.

7. It is expressly agreed that this Agreement is not intended to limit the power of the City to impose other requirements, limitations, or fees, etc., as a condition of development, and does not relieve the Owner from complying with all other requirements that may be imposed as a condition of development, whether now in existence or hereinafter imposed by the City whether by zone change, subdivision map approval, ordinance, resolution, use permit, or otherwise. The

parties agree that this Paragraph does not apply to the approval of the final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit “A” and shown on Exhibit “B.”

8. To the extent allowed by law, the conditions of this Agreement constitute covenants running with the land, and shall be enforceable by the City or by any present or future owner of any of the land described in Exhibit “A” and shown on Exhibit “B.”

9. Owner agrees to comply with and abide by all conditions set forth by the City relating to the development of the property subject to this Agreement.

10. In the event of default by Owner, and in addition to any other remedy available to the City, the City shall have the right to rezone the land back to its original designation.

11. In the event that either City or the Owner shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

12. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

13. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

14. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: Ke Ryed 7/13/15
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
SHEMOIL MORADZADEH



Shemoil Moradzadeh

Title: Property Owner

ADDRESS: 3070 M Street, Suite 8
Merced, CA 95340

TELEPHONE: 209-383-3900

[Signature must be notarized]

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)
) ss.
County of Merced)

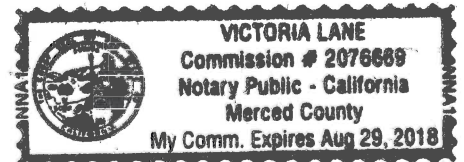
On July 14, 2015, before me, Victoria Lane,
a Notary Public, Personally appeared
Shemoil Moradzadeh

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 Victoria Lane
Notary Public



(seal)

Exhibit A
Legal Description

Parcel 1 as shown on the Parcel Map entitled "Parcel Map for Gibraltar Savings and Loan Assoc.," recorded in Book 19 at Page 40 of Merced County Records; also known as Assessor's Parcel Number (APN): 007-250-020.

GPA #15-02/SUP Rev. #18 to P-D #4
3080 M St.
Change from CO to CN

OLIVE

Subject
Site

M

EXHIBIT B



CITY OF MERCED
Planning Commission

Resolution #3052

WHEREAS, the Merced City Planning Commission at its regular meeting of June 17, 2015, held a public hearing and considered **General Plan Amendment #15-02 and Site Utilization Plan Revision #18 to Planned Development (P-D) #4**, initiated by Shemoil Moradzadeh, property owner. This application is a request to change the General Plan designation from Commercial Office (CO) to Neighborhood Commercial (CN) and to change the Site Utilization Plan designation from “Financial Institution” to “Retail” for an approximately 0.92 acre parcel located at the southeast corner of M Street and Olive Avenue; also known as Assessor’s Parcel No. 007-250-020; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through J of Staff Report #15-13; and,

NOW THEREFORE, after reviewing the City’s Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Negative Declaration regarding Environmental Review #15-09, and approval of General Plan Amendment #15-02 and Site Utilization Plan Revision #18 to Planned Development (P-D) #4, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

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

AYES: Commissioners McCoy, Padilla, Smoot, Smith, Colby, and Chairperson Williams
NOES: None
ABSENT: None (one vacancy)
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 3052

Page 2

June 17, 2015

Adopted this 17th day of June 2015



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Conditions of Approval
Planning Commission Resolution #3052
General Plan Amendment #15-02
Site Utilization Plan Revision #18 to P-D #4

1. The General Plan Land Use Map and the Site Utilization Plan Map for Planned Development (P-D) #4 shall be changed as shown on Exhibit 1 (map of changes) -- Attachment B of Staff Report #15-13.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
4. Approval of the General Plan Amendment and Site Utilization Plan Revision is subject to the applicants entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall

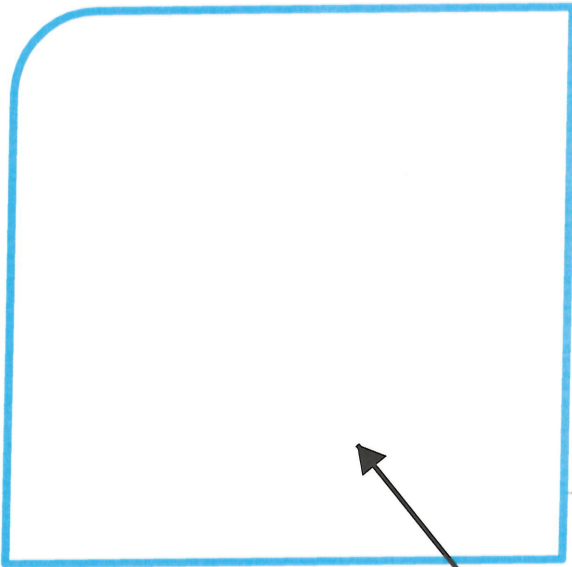
EXHIBIT A
of Planning Commission Resolution #3052

indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
7. The approval of the General Plan Amendment and Site Utilization Plan Revision allows all principally permitted and accessory uses within a Neighborhood Commercial (C-N) zone [Merced Municipal Code (MMC) Chapter 20.22] subject to all rules and regulations of the Planned Development. Conditional Uses listed in MMC Section 20.22.050 would be allowed subject to Conditional Use Permit review and approval.
8. All signing shall comply with the North Merced Sign Ordinance. A temporary banner permit shall be obtained prior to any tenant installing a temporary banner or sign. Free-standing temporary signs (i.e., sandwich boards, A-frame, feather-type, and moveable/dancing signs) are prohibited.
9. Sufficient parking shall be provided for all tenants of the building. If sufficient parking cannot be provided on-site or within 400 feet of the site as allowed by Merced Municipal Code Section 20.58.370, such use would be unable to locate within this building.
10. Any future modifications to the site or building may require the issuance of a building permit. The owner shall obtain all necessary permits for any improvements to the building or the site.

GPA #15-02/SUP Rev. #18 to P-D #4
3080 M St.
Change from CO to CN

OLIVE



Change General Plan
Designation from
Commercial Office (CO) to
Neighborhood Commercial (CN)

M

OLIVEWOOD

EXHIBIT D

