

M. STEPHEN JONES

3:24 PM

County Recorder

RE04

P Public

P

RECORDING REQUESTED BY:

City of Merced, A California Charter
Municipal Corporation

WHEN RECORDED, MAIL TO:

City Clerk's Office
City of Merced
678 W. 18th Street
Merced, CA 95340

Exempt Recording per Gov't Code
Section 6103

Doc#: 2008-015282



Titles: 1 Pages: 76

Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

The following document (initially recorded as Document # 2006-045412
on 6/27/2006) is being re-recorded to include page F-4 of Exhibit F,
which was originally omitted.

PRE-ANNEXATION DEVELOPMENT AGREEMENT

PENDING ANNEXATION AND PREZONING NO. _04-01_

"ABSOLUTE-BRIGHT"

ABSOLUTE, LLC
LEECO, LLC
BP INVESTORS, LLC
BRIGHT DEVELOPMENT, A CALIFORNIA CORPORATION

Date: April 17, 2006

M. STEPHEN JONES
County Recorder

2:58 PM
R06

RECORDED AT THE REQUEST OF
City Clerk
City of Merced
A California Charter Municipal Corporation

CM City of Merced

G

Doc#: 2006-045412



Titles: 1	Pages: 74
Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

WHEN RECORDED RETURN TO
City Clerk
City of Merced
678 West 18th Street
Merced, California 95340

(Space Above Line For Recorder's Use)

PRE-ANNEXATION DEVELOPMENT AGREEMENT

PENDING ANNEXATION AND PREZONING NO. 04-01

"ABSOLUTE-BRIGHT"

ABSOLUTE, LLC
LEECO, LLC
BP INVESTORS, LLC
BRIGHT DEVELOPMENT, A CALIFORNIA CORPORATION

Date: April 17, 2006

**PRE-ANNEXATION DEVELOPMENT AGREEMENT
BETWEEN
CITY OF MERCED
and
ABSOLUTE, LLC
LEECO, LLC
BP INVESTORS, LLC
BRIGHT DEVELOPMENT, A CALIFORNIA CORPORATION**

This Pre-Annexation Development Agreement ("Agreement") is entered into on the date it is recorded with the Merced County Clerk/County Recorder (the "Agreement Date") by and among the City of Merced, a California Charter Municipal Corporation ("City") and the persons and entities listed below ("Owner"):

ABSOLUTE, LLC
LEECO, LLC
BP INVESTORS, LLC
BRIGHT DEVELOPMENT, a CALIFORNIA
CORPORATION
C/O Rick Telegan
9 River Park Place East, Suite 101
Fresno, California 93720

RECITALS

A. To provide for orderly planning, City has the authority pursuant to California Government Code Sections 65300 and 65301 to include in its General Plan land outside its boundaries which is in the City's sphere of influence or in the City's judgment bears a relation to its planning and, pursuant to Section 65450, to adopt specific plans for any part of the area covered by the General Plan. City also has the authority pursuant to California Government Code Section 65859 to pre-zone property adjoining the City for the purpose of determining the zoning

designation that will apply to the property in the event of a subsequent annexation of the property to the City.

B. The Legislature of the State of California has adopted California Government Code Section 65864-65869.5 ("Development Agreement Legislation") which authorizes a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries or in unincorporated territory within a city's sphere of influence for the development of such property in order to, among other things: encourage and provide for the development of public facilities; to support development projects; provide certainty in approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage an investment in and commitment to comprehensive planning, which will make maximum efficient utilization of resources at the least economic cost to the public land; provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules and regulations and subject to the conditions of approval of such projects as provided in such annexation and/or development agreements.

C. Pursuant and subject to the Development Agreement Legislation, the City's police powers, and City Council Resolution No. 95-6, City is authorized to enter into binding agreements with persons having legal or equitable interest in real property located within the City's municipal boundaries or sphere of influence thereby establishing the conditions under which such property may be developed in the City or may be annexed into the City and governing development of such property upon its annexation.

D. By electing to enter into this Agreement, City shall bind future Members of the City Council of City by the obligations specified herein and further limit the future exercise of certain governmental and proprietary powers by any Member of the City Council to the extent such limitation is provided in the Development Agreement Legislation.

E. The terms and conditions of this Agreement have undergone extensive review by the staff of the City, the City's Planning Commission, the City Council of City, and Owner, and have been found to be fair, just, and reasonable.

F. City finds and determines that it will be in the best interests of its citizens and the public health, safety and welfare will be served by entering into this Agreement.

G. All of the procedures of the California Environmental Quality Act have been met with respect to this Agreement.

H. City was incorporated on April 1, 1889, and the City Charter was approved on April 12, 1949, and last amended in March 2002.

I. Owner is the fee or equitable owner of a an approximately 100 acre parcel of undeveloped land located within the City's sphere of influence, hereinafter referred to as the "Property" as legally described in Exhibit "A" and depicted on the map thereto, both attached hereto and made a part herein by this reference.

J. Owner has requested City to apply to the Merced County Local Agency Formation Commission ("LAFCO") to annex the Property. City is not opposed to Owner's request and will consider said request upon Owner's execution of this Agreement.

K. City and Owner desire that the Property be developed pursuant to policies in effect as of the date of this Agreement, including City Council Ordinance No. 2239 and City Council Ordinance No. 2240, as a residential planned development and pursuant to the land uses and conditions of Annexation/Rezoning Application #04-01 and Residential Planned Development (RP-D) #61 and Expanded Initial Study No. 04-02 (Mitigated Negative Declaration and Mitigation Monitoring Program).

L. The City Council of City hereby finds and determines that:

(1) The environmental impacts of the Project have been reviewed and all measures deemed feasible to mitigate adverse impacts thereof have been incorporated into the City approvals for the Project.

(2) No other mitigation measures for environmental impacts created by the Project, as presently approved, shall be required for development of the Project unless mandated by law.

(3) City may, pursuant to and in accordance with its rules, regulations, and ordinances, conduct an environmental review of subsequent discretionary entitlements for the development of the Project or any changes, amendments, or modifications to the Project. The City, as a result of such review, may impose additional measures (or conditions) to mitigate as permitted by law the

adverse environmental impacts of such development entitlement which were not considered or mitigated at the time of approval of the Project.

M. As a Mitigated Negative Declaration was prepared for the Project vested by this Agreement, the following language is to be included:

(1) Within forty-eight (48) hours of the effective date of this Agreement, Owner shall deliver to the City's Planning Department a check payable to the County Clerk in the amount of One Thousand Two Hundred Seventy-Five Dollars (\$1,275.00), which includes the One Thousand Two Hundred Fifty Dollars (\$1,250.00) fee required by Fish and Game Code Section 711.4(d)(3) plus the Twenty-Five Dollar (\$25.00) County administrative fee to enable the City to file the Notice of Determination required under Public Resources Code Section 21152 and 14 Cal. Code of Regulations 15075. If within such forty-eight (48) hour period the Owner has not delivered to the City's Planning Department the check required above, this Agreement shall be void by reason of failure of a material condition, Fish and Game Code Section 711.4.

N. City Council of City has approved this Agreement by Ordinance No. 2241 adopted on 5/1, 2006, and effective on 5/31, 2006.

NOW, THEREFORE, in consideration of the above Recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:

1. Incorporation of Recitals. The RECITALS above are true and correct and constitute an enforceable provision of this Agreement.

2. Definitions. In this Agreement, unless the context otherwise requires, the following words and phrases shall have the meaning set forth below:

2.1 "City" is the City of Merced.

2.2 "County" is the County of Merced.

2.3 "Development Exaction" means any requirement of City in connection with or pursuant to any Land Use Regulation or Existing Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

2.4 "Development Plan" means the Existing Development Approvals defined in Section 2.6 below which are applicable to development of the Project.

2.5 "Effective Date" means the date upon which the Ordinance approving this Agreement becomes effective, which date is thirty (30) days following the date the City Council adopted such Ordinance absent a referendum challenge.

2.6 "Existing Development Approval(s)" means those certain development approvals in effect as of the effective date of this Agreement with respect to the Property, including, without limitation, the "Existing Development Approvals" listed in Exhibit "B" attached hereto and incorporated herein by this reference, which were approved by the City.

2.7 "Financing District" means a Community Facilities District formed pursuant to the Mello-Roos Community Facilities Act of 1982, (California Government Code Sections 53311 *et seq.*, as amended, and referred to herein as the "Mello-Roos" Law); an assessment district formed pursuant to the Landscaping and Lighting Act of 1972, (California Streets and Highways Code Sections 22500 *et seq.*, as amended); a special assessment district formed pursuant to the Municipal Improvement Act of 1913, (California Streets and Highways Code Section 10100, *et seq.*, as amended); or any other special assessment district pursuant to State law or by virtue of the City's status as a Charter City, formed for the purposes of financing the cost of public improvements, facilities, services and/or public facilities fees within a specific geographical area of the City.

2.8 "Future General Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City applicable to all properties in the City after the Effective Date and as stipulated in Section 14 of this Agreement.

2.9 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City, governing the development and use of land including without limitation, the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; the provisions for reservation or dedication of land for public purposes; and the design, improvement, and construction standards and specifications applicable to the development of the Property listed on Exhibit "C" attached hereto and incorporated herein by this reference, which are a matter of

public record on the Effective Date of this Agreement. "Land Use Regulations" does not include any County or City ordinance, resolution, code, rule, regulation, or official policy governing:

- (a) The conduct of businesses, professions, and occupations;
- (b) Taxes and assessments;
- (c) The control and abatement of nuisances;
- (d) The redevelopment authority of the Redevelopment Agency of the City of Merced;
- (e) The provision, maintenance, expansion, termination, conditions and limitations of municipal water and sewer services;
- (f) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (g) The exercise of the power of eminent domain.

2.10 "Owner" means the person or entity having a legal or equitable interest in the Property and Project and all successors, transferees, or assigns thereof;

2.11 "Project" or "Projects" is the development of the Property in accordance with the Development Plan.

2.12 "Property" is the real property legally described in Exhibit "A" and depicted on the map thereto, both attached hereto and incorporated herein by this reference.

2.13 "Subdivision" shall have the same meaning as that term is defined in Government Code Section 66424.

2.14 "Subsequent Development Approvals" means all development approvals required subsequent to the Effective Date in connection with development of the Property.

2.15 "Subsequent Land Use Regulation" means any Land Use Regulation adopted and effective after the Effective Date of this Agreement.

3. Interest of Owner. Owner represents that it has the fee title or equitable interest in the Property, and that all other persons holding legal or equitable interests in the Property are to be bound by this Agreement.

4. Exhibits. The following documents are referred to in this Agreement attached hereto, incorporated herein, and made a part hereof by this reference:

<u>Exhibit Designation</u>	<u>Description</u>
Exhibit A	Property Legal Description and Map
Exhibit B	Existing Development Approvals
Exhibit C	Land Use Regulations
Exhibit D	Public Benefits
Exhibit E	Notice of Default to Mortgagee
Exhibit F	Assignment and Assumption Agreement
Exhibit G	Planning Commission Resolution

5. Term of Agreement.

5.1 Term. The term of this Agreement shall commence on the Effective Date and shall extend for a period of twenty (20) years thereafter or buildout, whichever first occurs, but in no event longer than the term of the bonds issued as called for in Section 20.4, unless this Agreement is sooner terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto.

5.2 Time to Annex. Except as otherwise expressly provided in this Agreement, this Agreement shall terminate and be of no further force and effect if the change of organization or reorganization ("Annexation") of the Property is not approved by the Merced County Local Agency Formation Commission ("LAFCO") and the City Council of City and any other appropriate public agencies having jurisdiction thereover within two (2) years after the effective date of this Agreement unless extended in writing by mutual agreement of the parties.

5.3 Termination by Litigation. This Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or

issuance of a final order after exhaustion of any appeals directed against the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval by the City Council of City of this Agreement.

5.4 Subdivision Map Act Compliance. Any tentative map prepared for the Subdivision under this Agreement shall comply with the provisions of Government Code Section 66473.7.

6. Permitted Use and Density. The permitted use of the Property is a mixed use development with approximately 67.65 acres of Low Density Residential single family homes at 4.7 dwelling units per acre (320 units), approximately 12.9 acres of Village Residential at a minimum of 10 dwelling units per acre (129 units) up to a maximum of 20 dwelling units per acre (258 units), and approximately 11.3 acres of Community Park and 1.1 acres of Neighborhood Park as well as approximately 7.4 acres of Linear Open Space. For the Low Density Residential, the minimum lot area is 5,000 square feet with a minimum lot width of 50 feet and maximum lot coverage of 50%. For the Village Residential, there is a minimum of 7 dwelling units per acre and a maximum of 30 dwelling units per acre. The maximum lot coverage is 65% for single family and townhouse development; all other lot coverage amounts will be determined at the time of approval of the conditional use permit. The maximum height and size of proposed buildings in the Project are 2½ stories or 35 feet for the R-1-5 areas and 3 stories or 40 feet for Residential Planned Development #61.

7. Public Benefits. In accordance with Section 1 of City Resolution No. 2005-101, specific public benefits are provided to City beyond those already forthcoming through Project approvals in return for the City's commitments to maintain present plans as regulations for the determinate period set forth in this Agreement. These specific public benefits are set forth on Exhibit "D" attached hereto and incorporated herein by this reference as if set forth in full. Owner agrees to provide all public benefits identified in said Exhibit "D" in such manner and within such timeframe as provided therein.

8. Annexation.

8.1 Annexation-Owner's Obligations. Owner shall take all actions reasonably necessary to process and complete proceedings before LAFCO on the Annexation. Owner shall pay all LAFCO processing fees required in connection with the Annexation and shall pay any generally applicable City processing fees required for the Annexation. Owner shall reimburse City for its actual and

reasonable costs incurred in the processing of this Agreement. Owner agrees to take all steps reasonably necessary to support annexation to the City, including voting in favor of annexation. Owner shall assist City in preparing the Plan of Services required by LAFCO.

8.2 City's Duty to Cooperate. City shall cooperate and assist in the processing of the Annexation before LAFCO by timely taking the following actions:

- (a) Providing all information reasonably required or requested by LAFCO with respect to the Annexation including, without limitation, a Plan of Services providing information to LAFCO with respect to the provision of municipal services to the Annexation Property by the City; and,
- (b) Providing a written statement of support for the Annexation to LAFCO prior to the LAFCO public hearing on the Annexation.

8.3 City to Purchase Park Land upon Annexation. City agrees to purchase from Absolute, LLC and Leeco, LLC ("Absolute-Leeco") the park land designated as a community park and the area designated a neighborhood park on the Development Plan for the Projects owned or controlled by Absolute-Leeco ("Absolute-Leeco Park Land") containing 11.3 acres of land (gross) of community park and 1.1 acres of land (gross) of neighborhood park. The City shall pay Absolute-Leeco One Hundred Eighty Thousand and No/100th Dollars (\$180,000.00) per acre (gross) based upon the City's current determination of Fair Market Value of the City's Park Service Areas and adjusted as amended thereafter by the City until such obligation is paid. The total purchase price shall be Two Million Three Hundred Twelve Thousand and No/100th Dollars (\$2,312,000.00), as adjusted as set forth herein for the Absolute-Leeco Park Land, plus credit for the Linear Park/Tower Transmission Line Easement and less Absolute-Leeco's obligation for impact fees for parks under the City's impact fee schedule in effect at such time according to the final number of lots approved for the Absolute-Leeco tentative map. City shall pay Absolute-Leeco the total purchase price in U.S. Dollars at such time as the tentative map for Absolute-Leeco is approved. Neither Bright Development nor BP Investors, LLC owns or controls any land designated as a community park or neighborhood park on the Development Plan for the Project. For purposes of calculating park impact fees for the Projects within the

Development Plan the land designated V-R (Village Residential) shall be assumed to be built at 10 units per acre.

9. Assignment.

9.1 Right to Assign. The Owner shall have the right to sell, transfer, or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Sections 66410, *et seq.*, or Chapter 18.04 of the Merced Municipal Code to any person, partnership, joint venture, firm, limited liability company, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties, and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

- (a) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Property. Owner agrees to provide specific notice of this Agreement, including the record or document number, where a true and correct copy of this Agreement may be obtained from the County Clerk/County Recorder of the County of Merced, in any grant deed or other document purporting to transfer the title or an interest in the Property during the term of this Agreement or any extension thereof.
- (b) No less than thirty (30) business days prior to any such sale, transfer, or assignment, the Owner shall notify City, in writing, of such sale, transfer, or assignment and shall provide City with an executed Assignment and Assumption Agreement, in a form acceptable to the City Attorney, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of the owner under this Agreement. Where multiple sales, transfers, or assignments are contemplated by Owner to more than one purchaser, transferee, or assignee, said Assignment

and Assumption Agreement shall expressly specify and apportion shared obligations amongst various purchasers, transferees, or assignees.

Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall be null and void and shall constitute a material default by the Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (b) of this Subsection, the burdens of this Agreement placed upon Owner shall run with the land and shall be binding upon any purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed.

9.2 Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring Owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring Owner of **ALL** of the following conditions:

- (a) The Owner no longer has a legal interest in all or any part of the Property except as a beneficiary under a deed of trust.
- (b) The Owner is not then in default under this Agreement.
- (c) The Owner or purchaser has provided City with the notice and executed Assignment and Assumption Agreement required under Paragraph (b) of Subsection 9.1 above, attached hereto as Exhibit F.
- (d) The purchaser, transferee, or assignee provides City with security equivalent to or better than any security previously provided by Owner to guarantee the installation of the improvements set forth on the improvement plans and subdivision agreement for the portion of the Project being transferred or assigned pursuant to the Subdivision Map Act and Sections 18.24.100, 18.24.110 and 18.24.150 of the Merced Municipal Code. Except as set forth herein, this provision shall not be construed to give the City any

additional right of approval of the purchaser, transferee or assignee.

- (e) The Owner or purchaser, transferee or assignee has reimbursed City for any and all City costs associated with Owner's transfer of all or a portion of the Property.
- (f) The Owner has reimbursed City for any and all costs relating to this Agreement.
- (g) The purchaser, transferee or assignee has agreed in the Assignment and Assumption Agreement required under Paragraph (b) of Subsection 9.1 above to assume all the conditions in Section 20.4 (Sewer Facility Capital Expansion Improvement Bonds).

9.3 Termination of Agreement with Respect to Individual Lots upon Sale to Public and Completion of Construction. With the exception of Section 20.4, the provisions of Subsection 9.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of all of the following conditions:

- (a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and
- (b) A Certificate of Occupancy has been issued for a building on a lot, and the fees set forth in this Agreement have been paid; and
- (c) The conditions in Section 20.4 (Sewer Facility Capital Expansion Improvement Bonds) have been completely satisfied or are no longer required.

9.4 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section.

10. Mortgagee Protection. Neither entering into this Agreement nor committing a Default under this Agreement shall defeat, render invalid, diminish, or impair the lien of Mortgagees having a Mortgage on any portion of the Property made in good faith and for value, unless otherwise required by law. No Mortgagee shall have an obligation or duty under this Agreement to perform Owner's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu of foreclosure, but upon acquiring the right to possession pursuant to a Mortgage on the Property or any portion thereof, the Mortgagee shall be subject to the terms and conditions of this Agreement. The term of this Agreement shall not be extended based on the fact that a Mortgagee held title to the Property for all or any part of the term of this Agreement.

11. Notice of Default to Mortgagee; Right to Cure.

11.1 Timely Notice to City Clerk. If the City Clerk timely receives notice, on the form set forth on Exhibit "E," attached hereto and incorporated herein by this reference, from a Mortgagee requesting a copy of any Notice of Default given to Owner under the terms of the Agreement, the City shall endeavor to provide a copy of that notice to the Mortgagee within ten (10) days of sending the Notice of Default to Owner. City shall have no liability for damages or otherwise to Owner, Owner's successor, or to any Mortgagee or successor therefor for failure to provide such notice.

11.2 Mortgagee Right to Cure. The Mortgagee shall have the right, but not the obligation, for a period up to ninety (90) days after the receipt of such notice from the City to cure or remedy, or to commence to cure or remedy, the Default unless a further extension of time to cure is granted in writing by the City. However, a Mortgagee to avail itself of the rights provided by this Section must notify the City in writing of its intent to attempt to remedy or cure within twenty (20) days of the date of the Notice of Default from City to Mortgagee. A failure by a Mortgagee to provide such timely notice to City shall extinguish the rights and protections provided by this Section. By providing the notice to City, Mortgagee is agreeing and consenting to the provisions of this Section and is further waiving the right to claim a prior lien on the Property. If the Default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continually through

foreclosure, a receiver, or otherwise, and shall thereafter remedy or cure the Default within thirty (30) days after obtaining possession. If the Default cannot, with diligence, be remedied or cured within this thirty (30) day period, then the Mortgagee shall have such additional time as the City Council determines is reasonably necessary to remedy or cure the Default, if the Mortgagee commences cure during the thirty (30) day period and thereafter diligently pursues and completes the cure.

11.3 City Council Review of Mortgagee's Efforts. Such diligence by the Mortgagee on effectuating such cure shall be reviewed by the City's City Council every thirty (30) days thereafter until any and all Defaults are cured. If at any such review, the City Council determines that the Mortgagee is not making good faith efforts to cure any and all Defaults, the City Council shall have the authority to terminate this Agreement at its sole and complete discretion.

11.4 Reservation of City's Rights During Cure Period. In return for City granting to Owner, Owner's successors and transferees, and the Mortgagees of each of them, an extended time to remedy or cure a Default, Owner, Owner's successors and transferees, and the Mortgagees of each of them agree that once a Default is declared by City's City Council, the City may take the actions set forth below and lien and burden the Property for the costs thereof -- irrespective of any lien priority, construction loan, deed of trust, or other encumbrance. Such actions include the following:

- (a) Abate public nuisances following the City-adopted public nuisance ordinance;
- (b) Remedy any health or safety threat posed by the Property, construction, or other activities going on on the Property;
- (c) Control storm water run-off from the Property pursuant to Chapter 8.08 of the Merced Municipal Code;
- (d) Screen any unsightly appearance on the Property for aesthetic purposes;
- (e) Abate weeds; and,
- (f) Control noise, dust, or other offensive conditions on the Property.

11.5 Mortgagee Extension of Cure to Possession of Agency. In the event any obligation of Owner is for the payment of money or fees, other than standard permit or processing fees, and a Default is declared by City based upon such failure to pay, a Mortgagee may be granted an extended time to remedy or cure until such time as Mortgagee obtains possession of the Property; provided, Mortgagee agrees that any money due City which remains unpaid shall bear the higher of the legal rate of interest or the United States Department of Labor San Francisco-Oakland-San Jose Consumer Price Index as the measure of inflation.

12. Mortgagee Rights. The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with the Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Owner shall reimburse City for any and all of City's reasonable costs associated with said negotiations, interpretations, and modifications and shall make reimbursement payments to City within thirty (30) days or receipt of an invoice from City.

Any Mortgagee of the Property shall be able to rely upon the provisions hereof and except as expressly provided in this Agreement, neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law or specified herein.

13. Uniform Codes. This Agreement does not prevent the City from adopting and amending in compliance with State law certain Uniform Codes which are based on recommendations of a multi-state professional organization and which become applicable throughout the City -- including the Project and Property subject to this Agreement. Such Uniform Codes include, but are not limited to, the Uniform Building Code, Uniform Mechanical Code, National Electrical Code, and Uniform Fire Code.

14. Public Health and Safety Concerns, Application to Project of Future General Regulations.

14.1 City Authority to Adopt Future General Regulations. This Agreement does not prevent the City from adopting Future General Regulations and applying such Future General Regulations to the Project and the Property, provided the City Council adopts findings that a failure to apply such Future General Regulations would result in a condition injurious or detrimental to the public health and safety. These findings shall be based upon substantial evidence in the record from a hearing conducted by the City Council at which the Owner was provided at least ten (10) days advance written notice.

14.2 Application of Future General Regulations to Project. Notwithstanding Section 14.1 above, the City shall not apply to the Project or the Property any Future General Regulations which prevent, preclude, or unreasonably delay or alter or in any way affect the implementation of all or any portion of the Development Plan, unless the City Council, in accordance with Section 14.1 above also makes a finding that such Future General Regulations are reasonably necessary to correct or avoid such injurious or detrimental condition. Any Future General Regulations applied to the Project or the Property pursuant to this Section 14.2 shall only apply for the duration necessary to correct or avoid such injurious or detrimental condition.

15. Binding Effect of Agreement. The burdens of this Agreement bind and the benefits of the Agreement inure to the successors-in-interest to the parties to it in accordance with the provisions of and subject to the limitations of this Agreement.

16. Project as a Private Undertaking/Relationship of Parties. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. No partnership, joint venture, or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

17. Changes in Project. City may expand the permitted uses for the Property without amending this Agreement so long as Owner or Owner's successor retains his/her/their existing entitlements.

18. Timing of Development; Pardee Construction case. The parties acknowledge that Owner cannot at this time predict when, or at the rate at which the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties, it is the parties intent to cure that deficiency by acknowledging and providing that the Owner shall have the right to develop the Property in such order, at such rate, and at such times as the Owner deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in the Development Plan and this Agreement.

19. Indemnity and Cost of Litigation.

19.1 Hold Harmless. The Owner shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof, and officers, 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, employees, or agents thereof to attack, modify, 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 Property, the Project, and the approvals related thereto. Furthermore, Owner shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, and officers, employees, or agents 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 in the defense of the action by providing staff witnesses, documents, and related information.

19.2 Hold Harmless—Damages & Injury. Owner further agrees to and shall indemnify, protect, defend, and hold City, its officers, employees, agents, and representatives harmless from liability for any and all damage or claims for damage for personal injury, including death, and claims for property damage, resulting from intentional or negligent acts, errors, or omissions which may arise from the direct or indirect operations of the Owner or those of its employees, officers, agents, contractors, subcontractors, or other person acting on its behalf which relate to the Project, or from any violation of any federal, state, municipal law, ordinance, or regulation, to the extent caused, in whole or in part, by the intentional or negligent acts, errors, or omissions of Owner or its employees, officers, agents, contractors, subcontractors, or other person acting on its behalf, or by the quality or character of Owner's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence of the City. It is understood that the duty of Owner to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Owner from liability under this indemnification and hold harmless clause. Owner agrees to and shall indemnify, protect, defend, and hold harmless the City and its officers, employees, agents, and representatives from actions for damages caused or alleged to have been suffered by reason of the operations referred to in this paragraph, regardless of whether or not City prepared, supplied, or approved plans or specifications for the Project. This indemnification requirement shall extend beyond the termination or expiration of this Agreement. By execution of this Agreement, Owner acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

19.3 Third Party Litigation Concerning Agreement. Owner shall indemnify, protect, defend, and hold harmless City, its officers, employees, or agents against any loss, cost, expense, claim, or counter-claim, complaint, or proceeding to attack, modify, set aside, void, or annul the approval of this Agreement or the approval of any permit or entitlement granted pursuant to this Agreement brought by a third party. City shall promptly notify Owner of any such claim, action, or proceeding, and City shall cooperate in the defense of the action by providing staff witnesses, documents, and related information. If City fails to promptly notify Owner of any such claim, action, or proceeding, or if City fails to cooperate in the defense of the action by providing staff witnesses, documents, and related information, Owner shall not thereafter be responsible to indemnify,

protect, defend, or hold harmless City. City may in its discretion participate in the defense of any such claim, action, or proceeding.

19.4 Environmental Assurances. Owner shall indemnify, protect, defend, and hold harmless City, its officers, employees, agents, assigns, and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred, or suffered by, or asserted against, City or its officers, employees, or agents arising from or attributable to any repair, cleanup, or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or hazardous wastes at any place within the Property which is the subject of this Agreement. The foregoing indemnity extends beyond the term of this Agreement and is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, "CERCLA," 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, and their successor statutes, to insure, protect, defend, hold harmless, and indemnify City from liability.

19.5 Release. Except for non-damage remedies, including the remedy of specific performance and judicial review as provided for in Sections 27.4 and 27.5 hereof, Owner, for itself, its successors and assignees, hereby releases the City, its officers, agents, and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms and/or operation of this Agreement.

19.6 Reservation of Rights. Owner's obligation to indemnify, protect, defend, and hold harmless under Sections 19.1 to 19.3 herein shall be

provided at Owner's sole expense, including but not limited to attorneys' fees and court costs, with legal counsel which Owner selects, hires, or otherwise engages to defend City hereunder to be approved by City. City reserves the right to conduct its own defense, provided, however, that Owner shall reimburse City forthwith for any and all reasonable expenses incurred for such defense, including, but not limited to, attorneys' fees and court costs, upon billing and accounting therefor.

19.7 Apportionment of Obligations Among Absolute-Bright Annexation Owners. For obligations of Owner under Sections 19.1 and 19.3, the obligation shall be shared among all Owners in the Absolute-Bright Annexation who have Pre-Annexation Development Agreements with the City (hereinafter the "Absolute-Bright Owners"). The defense obligation shall be joint and several as between the Absolute-Bright Owners while the costs and expenses thereof shall be apportioned among such Absolute-Bright Owners based on the percentage of equivalent dwelling units each Absolute-Bright Owner has relative to the total equivalent dwelling in the Absolute-Bright Annexation. In the event the City is not notified by all the Absolute-Bright Owners within ten (10) days of the City's tendering of the defense of such action to the Absolute-Bright Owners of the selection of counsel and commencement of defense, the City shall have the right to select counsel, prepare the defense, and charge the actual costs thereof, including City staff time, to the Absolute-Bright Owners based on the apportionment allocation set forth above, however, such action shall not relieve Owner from liability under the indemnification and hold harmless provisions. Owner agrees to promptly pay any invoice submitted.

For obligations of Owner under Sections 19.2 and 19.4, if the damage or injury occurs on Owner's property and/or involves only Owner's project, Owner shall be responsible for defense and indemnity obligation. If the damage or injury involves Owner's property and that of other Absolute-Bright Owners, the defense and indemnity obligation shall be shared as between the impacted Absolute-Bright Owners and apportioned among such Absolute-Bright Owners based on the percentage of equivalent dwelling units each Absolute-Bright Owner has relative to the total equivalent dwelling for the impacted properties in the Absolute-Bright Annexation. In the event the City is not notified by Owner within ten (10) days of the City's tendering of the defense of such action to Owner of the selection of counsel and commencement of defense, the City shall have the right to select counsel, prepare the defense, and charge the actual costs thereof, including City staff time, to the impacted Absolute-Bright Owners based on the apportionment allocation set forth above, however, such action shall not relieve Owner from

liability under the indemnification and hold harmless provisions. Owner agrees to promptly pay any invoice submitted.

19.8 Survival. The provisions of this Section 19 shall survive the termination of this Agreement.

20. Public Benefits, Public Improvements and Facilities.

20.1 Intent. The parties acknowledge and agree that this Agreement confers private benefits on the Owner which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on the Owner by providing more fully for the satisfaction of the public needs resulting from development of the Project, as set forth on Exhibit "D" attached hereto and incorporated herein by this reference. Owner agrees to provide all public benefits identified in said Exhibit "D" in such manner and within such timeframe as provided therein.

20.2 Development Fees. Owner shall also pay all other customary and typical development exactions, for a Project of this size and nature, in existence as of the Effective Date and throughout the term of this Agreement, including but not limited to, Fire, Traffic Signal Mitigation, Public Facility Financing Plan Impact Fees, School Impact Fees (SB50), sewer and water connection fees, and permit fees pursuant to the provisions of City ordinances and resolutions in existence at the time of payment, including any periodic adjustments provided by said ordinances and resolutions. Notwithstanding any other language to the contrary herein, Absolute, LLC and Leeco, LLC shall not be required to pay to the City any Park Fees.

20.3 Public Works. If Owner is required by this Agreement, or any other obligation, to construct any public works facilities which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work in the same manner and subject to the same requirements as would be applicable to City or such other public agency should it have undertaken such construction.

20.4 Sewer Facility Capital Expansion Improvement Bond. The City anticipates (i) forming one or more Financing Districts to finance the expansion of its sewer facilities and system to upgrade the City's sewer treatment facility to accommodate the additional sewer capacity required for growth attributable to the Project, and (ii) issuing sewer facility capital expansion improvement bonds or

other indebtedness (the "Bonds") to be secured in whole or in part from assessments or special taxes levied within such Financing Districts, or similar fees and charges. Owner, on behalf of itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, agrees to form or annex to a Financing District or pay fees and charges in lieu thereof when established, agrees to include the Property within a Financing District, and agrees to pledge and encumber the Property for purposes of the issuance of the Bonds and authorize, by petition, vote, or otherwise, that inclusion of the Property in the Financing District, the issuance of the Bonds, and the imposition by the City of a special tax or assessment on the Property in order to secure the Bonds. The Owner acknowledges that an assessment lien or special tax lien will be recorded against the Property and that the lien will continue in force and effect until the assessment or special tax obligation is prepaid or permanently satisfied and the lien cancelled in accordance with the law. The amount of the lien shall not exceed \$12,000 per equivalent dwelling unit. The amount of the lien for any non-residential development shall be calculated based upon the Treatment Plant, line, pump and the fees in effect at the time a building permit is obtained. By executing this Agreement, Owner, on behalf of itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, agrees and consents to waive any protest, suit, claim, or challenge to the Bond or any proceedings related thereto. The terms and condition in this Section 20.4 shall run with the land and shall survive beyond the termination or expiration of this Agreement.

21. Reservation of Authority.

21.1 Limitations, Reservations, and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Property:

- (a) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals.
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure.

- (c) Regulations imposing Development Exactions; provided, however, that no such subsequently adopted Development Exactions shall be applicable to development of the Property unless such Development Exactions are applied uniformly to development throughout the City.
- (d) Regulations governing construction standards and specifications including without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code.
- (e) Regulations governing:
 - (1) The control and abatement of public nuisances;
 - (2) Storm water run-off from the Property;
 - (3) The remedy of any health or safety threat posted by the Property;
 - (4) The redevelopment authority of the Redevelopment Agency of the City of Merced; and,
 - (5) The provision, maintenance, expansion, termination, conditions and limitations of municipal water and sewer services.
- (f) Regulations which are in conflict with the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property.
- (g) Regulations which are in conflict with the Development Plan provided Owner has given written consent to the application of such regulations to development of the Property.

21.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying the Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing or Subsequent Land Use Regulations not in conflict with the Development Plan.

21.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

21.4 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies.

22. Development of the Property, Vesting, and Changes/Amendments.

22.1 Rights to Develop. Contingent upon approval of Owner's annexation request by LAFCO and subject to the terms of this Agreement, Owner shall have a vested right to develop the Property in accordance with, and to the extent of the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Development Plan. In exchange for the vested right to develop pursuant to this Agreement, Owner expressly waives for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, the right to challenge or contest the validity of the annexation and any condition of approval attached to any entitlement which is a part of the Development Plan.

22.2 Payment of Fees. Owner, for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, agrees to pay all City and school district fees, taxes, and/or assessments in effect on the Effective Date of this Agreement, 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 special assessments or Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by a special assessment law or the Mello-Roos law, etc., (and to comply with the additional conditions set forth in Exhibit “G,” attached hereto and incorporated herein by this reference). 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 mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

22.3 Compliance with Conditions. Owner agrees to comply with the conditions of approval set forth in Planning Commission Resolution No. ~~2871~~, attached hereto as Exhibit “G,” and within this Agreement and acknowledges that the conditions are necessary to mitigate the environmental impacts, if any, 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.

22.4 Utility Connection Charge. 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.

22.5 Building Permits & Wastewater Treatment Plant Capacity. No building permit or other permit for the Project shall be issued if Owner is not in full compliance with this Agreement. Notwithstanding any provision to the contrary, in the event the City’s Wastewater Treatment Plant’s capacity or operation is insufficient to serve all development projects in the City seeking connections, available building permits and sewer connections (hereinafter “Connection Permit”), shall be allocated as follows:

- (a) The City reserves 5% of the available capacity, but not less than 100,000 gallons per day, to serve new commercial and industrial projects;

- (b) Among residential projects, first priority shall be given for up to 5% of available capacity, but not less than 100,000 gallons per day, for projects legally covenanted and required to sell or lease to persons of low or moderate income;
- (c) The balance of available capacity shall be allocated through the issuance of Connection Permits to Projects that have pledged their Property subject to this Agreement as security for the public financing essential to the expansion of the City's Wastewater Treatment Plant, and among those Projects that have done so meet the following additional criteria:
 - (1) Have approved final maps for their Project and completed all other discretionary approvals (such as Conditional Use Permits);
 - (2) Agree and are able to commence construction of buildings within 120 days of receiving a building permit;
 - (3) Agree pursuant to a construction phasing plan submitted with the Connection Permit application to diligently pursue construction until completion in accordance with the phasing plan; and,
 - (4) Allocation of Connection Permits shall be based on those applications approved meeting the requirements above with those approved first in time getting priority over those filing subsequent thereto.

Insufficient capacity shall be determined by the City Engineer considering existing agreements to serve and maximum flow to the Wastewater Treatment Plant at its highest average point.

This allocation method for Connection Permits shall continue until such time as capacity at the Wastewater Treatment Plant is able to meet all of the requests for service, as determined by the City Engineer, with a sufficient reserve capacity to meet unexpected needs or opportunities for the City.

If construction is not commenced within the time limit specified in Section 22.5(c)(2), any Connection Permit for which construction has not commenced under the building permit shall be deemed void and subject to reallocation.

Once a Connection Permit is issued for a Project, the Connection Permit is not transferable by the permit holder to another site or location. The Connection Permit may be transferred between parties, such as when one company buys out a site to complete the Project, so long as the location does not change. Any attempted transfer to another location shall be void and cause the Connection Permit to be immediately voided and subject to reallocation.

22.6 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the existing Land Use Regulations in effect on the Effective Date of this Agreement. City shall exercise its lawful reasonable discretion in connection with Subsequent Development Approvals in accordance with the Development Plan, and as provided by this Agreement. City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters. City may, at the request of Owner, contract for planning and engineering consultant services to expedite the review and processing of Subsequent Development Approvals, the cost of which shall be borne by Owner.

22.7 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event the Owner finds that a change in the Existing Development Approvals is necessary or appropriate, the Owner shall apply for a Subsequent Development Approval to effectuate such change. If approved by City under Section 25 below, any such change in the Existing Development Approvals shall be incorporated herein as addendum to this Agreement and may be further changed from time to time as provided in this Section. Owner, shall, within thirty (30) days of written demand by City, reimburse City for any and all reasonable costs, associated with any amendment or change to this Agreement that is initiated by Owner or Owner's successor -- without regard to the outcome of the request for amendment or change

to this Agreement. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or,
- (b) Increase the density or intensity of use of the Property as a whole; or,
- (c) Increase the maximum height and size of permitted buildings; or,
- (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,
- (e) Constitute a project requiring a subsequent or a supplemental Environmental Impact Report pursuant to Section 21166 of the Public Resources Code.

Notwithstanding the forgoing, the City is neither obligated nor required to make any change or amendment to this Agreement.

23. Periodic Review of Compliance with Agreement.

23.1 City Compliance Review. Pursuant to City Council Resolution No. 95-6, as it may be subsequently amended, City shall review this Agreement at least once during every twelve (12) month period from the Effective Date of this Agreement. The Owner or successor shall reimburse City for the reasonable and necessary costs of this review, within thirty (30) days of written demand from City.

23.2 Owner Good Faith Compliance. During each periodic review by City, the Owner is required to demonstrate good faith compliance with the terms of this Agreement. The Owner agrees to furnish such evidence of good faith compliance as City in the exercise of its discretion may require.

24. Financing District. In addition to any Financing District required by Section 20.4 hereof, upon the request of Owner, the parties shall cooperate in exploring the use of special assessment districts, special tax districts, and other similar financing districts for the financing of the construction, improvement, or

acquisition of public infrastructure, facilities, lands, and improvements to serve the Project, whether located within or outside the Property. It is acknowledged that nothing contained in this Agreement shall be construed as requiring City or City Council to form such a district or to issue or sell bonds therefor.

25. Amendment or Cancellation of Agreement. This Agreement shall not be amended, modified, or canceled, in whole or in part, unless in writing signed by both parties hereto, and only by mutual consent of the parties and in the manner provided for in Government Code Sections 65868, 65867, and 65867.5. The provisions of this Section do not impact the right of the City to terminate this Agreement because of Owner's breach or failure to comply in good faith with the requirements of this Agreement.

26. Enforcement. Unless amended or canceled as herein provided, this Agreement is enforceable by any party to it notwithstanding a change in the applicable general or specific plan, zoning, subdivision, or building regulations adopted by the City which alter or amend the rules, regulations, or policies governing permitted uses of the land, density, design, improvement, and construction standards and specifications.

27. Enforced Delay, Default, Remedies and Termination.

27.1 Default by Owner. If the City alleges an Owner Default, the City shall conduct a hearing utilizing the Annual Review procedures in Section 23.1 before the City may terminate this Agreement. Failure by Owner to reserve or dedicate any property pursuant to the Development Plan, or to pay fees and charges as required by the Land Use Regulations and this Agreement as they become due, shall constitute a separate material Owner Default. It shall also be deemed a material Owner Default of a material provision of this Agreement for more than forty-five (45) days to pass from City's written demand for reimbursement of any reimbursable costs under this Agreement and the receipt by City of such reimbursement. In the event of Owner Default, and in addition to any other remedy available to the City, the City shall have the right to rezone the Property back to its original designation.

27.2 Default by City. If Owner alleges a City Default by written notice served on City in accordance with Section 30 hereof and alleges that the City has not cured the Default within ninety (90) days, Owner may pursue any legal or equitable remedy available to it under this Agreement. It is acknowledged by the parties that City would not have entered into this Agreement if City were to

be subject to or liable for damages -- including monetary damages -- under or with respect to this Agreement or the application thereof, or with respect to the Project. Owner, for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, expressly waives the right to seek damages -- including monetary damages -- against the City or any officer, or employee, , for any default or breach of this Agreement. Owner, on behalf of itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, covenants and agrees not to sue for or claim any damages -- including monetary damages -- for any purported breach of this Agreement by City. However, Owner shall have the right to pursue all its legal remedies against any third party for negligence or any other form of liability for the third party's failure to perform in the expansion of the sewer treatment plant. City may assign to Owner any right, claim or cause of action it may have against any third party for Owner to pursue at its own discretion in the event that City exercises its rights against Owner under the Agreement. During the time when Owner alleges the existence of a City Default and without limiting any of its other available remedies, Owner shall not be obligated to proceed with or complete the Project or any phase of the Project, nor to reserve or dedicate any property pursuant to the Development Plan or this Agreement. Upon a City Default, any resulting delays in Owner's performance shall neither be an Owner Default nor constitute grounds for termination or cancellation of this Agreement by the City.

27.3 Waiver. Failure or delay in giving Notice of Default shall not waive a Party's right to give future Notice of the same or any other Default.

27.4 Specific Performance Remedy. Due to the elimination of damages as a remedy against City and to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Owner for such efforts. For the above reasons, the City and Owner agree that damages would not be an adequate remedy if the City fails to carry out its obligations under this Agreement. Therefore, no money damages are available against City, or any officer, employee, or agent thereof.

Specific performance of this Agreement is necessary as the exclusive remedy to compensate Owner if the City fails to carry out its obligations under this Agreement and is also available to City, if Owner defaults hereunder.

27.5 Judicial Review. In the event City elects to terminate this Agreement pursuant to the provisions of Sections 11.7, 25, or 27.1, the Owner may challenge such termination by instituting legal proceedings in which event the court shall exercise its review, based on substantial evidence, as to the existence of cause for termination.

28. Events of Default. Owner is in default under this Agreement upon the happening of one or more of the following events or conditions:

- (a) If a warranty, representation, or statement made or furnished by Owner to City is false or proves to have been false in any material respect when it was made;
- (b) More than forty-five (45) days have passed since City's making of a written request to Owner for payment or reimbursement for a fee or service authorized or agreed to pursuant to this Agreement;
- (c) Failure by Owner to reserve or dedicate any property pursuant to the Development Plan, or to pay fees and charges as required by the Land Use Regulations and this Agreement as they become due; or
- (d) A finding and determination by City that upon the basis of substantial evidence the Owner has not complied in good faith with one or more of the terms or conditions of this Agreement.

29. Attorney's Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

30. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and presumed delivered upon actual receipt by personal delivery or within three (3) days following deposit thereof in United States Mail. Notice required to be given to City shall be addressed as follows:

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

Notices required to be given to Owner shall be addressed as follows:

To Owner: ABSOLUTE, LLC
LEECO, LLC
BP INVESTORS, LLC
BRIGHT DEVELOPMENT, a California Corporation
C/O Rick Telegan
9 River Park Place East, Suite 101
Fresno, California 93720

With a copy to: J. Scott Dorius
Triebisch, Frampton, Dorius & Lima
300 N. Palm Street
P.O. Box 709
Turlock, CA 95381

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

31. Cooperation. City agrees that it shall accept for processing and promptly take action on all applications, provided they are in a proper form and acceptable for required processing for discretionary permits, tract or parcel maps, or other land use entitlement for development of the Project in accordance with the provisions of this Agreement. City shall cooperate with Owner in providing expeditious review of any such applications, permits, or land use entitlement and, upon request and payment of any costs and/or extra fees associated therewith by Owner, City shall assign to the Project planner(s), building inspector(s), and/or other staff personnel as required to insure the timely processing and completion of the Project.

32. Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably

required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement. In the event, Owner or Owner's successor requires supplemental or additional agreements for purposes of securing financing or similar purposes, City will endeavor to assist in this respect, provided, however, Owner or Owner's successor shall reimburse the City for any and all costs associated with processing, reviewing, negotiating, or acting on such agreements. Owner or Owner's successor agrees to reimburse City within thirty (30) days of written demand therefor.

33. Rules of Construction and Miscellaneous Terms.

- (a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.
- (b) If there is more than one signer of this Agreement their obligations are joint and several.
- (c) The time limits set forth in this Agreement may be extended by mutual written consent of the parties in accordance with the procedures for adoption of the Agreement.
- (d) This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person, including but not limited to third party beneficiaries, shall have any right of action based upon any provision of this Agreement.

34. Running with Land. 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."

35. Waiver. In the event that either City or 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.

36. Venue. 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.

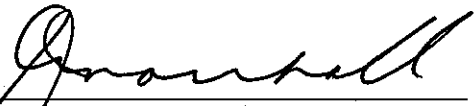
37. Entire Agreement. This Agreement and the exhibits hereto contain the complete, final, entire, and exclusive expression of the agreement between the parties hereto, and is intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto not expressly set forth in this Agreement shall be null and void.

38. Counterparts. This Agreement may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

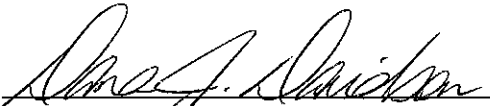
39. Authority to Execute. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

IN WITNESS WHEREOF this Pre-Annexation Development Agreement has been executed by the authorized representatives of the parties hereto.

CITY OF MERCED
A California Charter Municipal Corporation

BY: 
City Manager James G. Marshall

ATTEST:
JAMES G. MARSHALL, CITY CLERK

BY: 
Deputy City Clerk

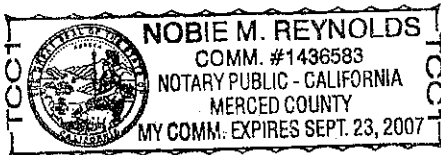
ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF MERCED)

On April 18, 2006, before me, Nobie M. Reynolds,
Notary Public, personally appeared James G. Marshall

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

WITNESS my hand and official seal.



Nobie M. Reynolds
SIGNATURE OF NOTARY

APPROVED AS TO FORM:

BY: *Shirley S. Pig* *2/24/06*
City Attorney Date

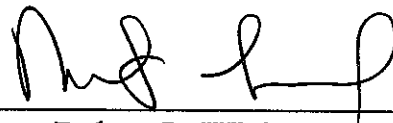
260948
ACCOUNT DATA:

BY: *[Signature]*
Verified by Finance Officer

no funds required 4-11-06 MHA
4-11-06 V.R. 5

(Signatures Continued on Next Page)

OWNER:
ABSOLUTE, LLC

BY: 
Robert L. Wiebe

Its: Member

Taxpayer I.D. No. 20-0307449

ADDRESS: 7090 N. Marks Ave., Suite 107
Fresno, CA 93711

TELEPHONE: 559/431-8334

FACSIMILE: 559/431-8379

E-MAIL: cindic@cpawiebe.com

ALL-PURPOSE ACKNOWLEDGMENT

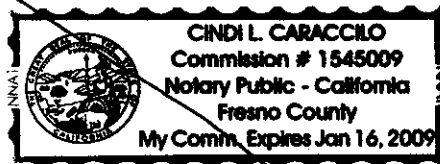
State of California

County of Fresno

On, February 28, 2006, before me, Cindi L. Caraccilo, Notary Public
personally appeared, Robert L. Wiebe
personally known to me (or proved to me on the basis of satisfactory evidence) to
be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Cindi L. Caraccilo
Notary Public



(Seal)

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL(S)
☐ OFFICER(S) (TITLE[S]):

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ SUBSCRIBING WITNESS
☐ GUARDIAN/CONSERVATOR
☒ OTHER: Manager

____ Chairperson _____

SIGNER IS REPRESENTING:
Name of person(s) or entity(ies):

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno } ss.

On February 28, 2004 before me, Cindi L. Caraccilo, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Robert L. Wiebe
Name(s) of Signer(s)



☒ personally known to me

☐ 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.

Place Notary Seal Above

WITNESS my hand and official seal.

Cindi L. Caraccilo
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Pre-Annexation Development Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s).

Signer's Name: Robert L. Wiebe

- ☐ Individual
☒ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☒ Other: Manager

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

OWNER:
LEECO, LLC

BY:


Lee V. Kolligian

Its: Member

Taxpayer I.D. No. 91-1918501

ADDRESS: 9 River Park Plaza East
Suite 101
Fresno, CA 93720

TELEPHONE: 559/434-8600

FACSIMILE: 559/434-8615

E-MAIL: LSKFresno@aol.com

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On February 28, 2006, before me, Cindi L. Caraccilo, Notary Public
personally appeared, Lee J. Kolligian,
~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to
be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and
acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized
capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Cindi L. Caraccilo
Notary Public



(Seal)

CAPACITY CLAIMED BY SIGNER

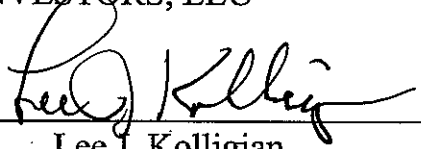
- ☐ INDIVIDUAL(S)
☐ OFFICER(S) (TITLE[S]):

☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ SUBSCRIBING WITNESS
☐ GUARDIAN/CONSERVATOR
☒ OTHER: manager

____ Chairperson _____

SIGNER IS REPRESENTING:
Name of person(s) or entity(ies):

OWNER:
BP INVESTORS, LLC

BY: 
Lee J. Kolligian

Its: Member

BY: 
Rick Telegan

Its: Member

Taxpayer I.D. No. 20-0050152

ADDRESS: 9 River Park Place East
Suite 101
Fresno, CA 93720

TELEPHONE: 559/434-0334
FACSIMILE: 559/434-8615
E-MAIL: Fresno3rdM@aol.com

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On February 28, 2006, before me, Cindi L. Caraccilo, Notary Public
personally appeared, Lee J. Kolligian,
~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to
be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and
acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized
capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Cindi L. Caraccilo
Notary Public



(Seal)

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL(S)
☐ OFFICER(S) (TITLE[S]):

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ SUBSCRIBING WITNESS
☐ GUARDIAN/CONSERVATOR
☒ OTHER: manager

____ Chairperson _____

SIGNER IS REPRESENTING:
Name of person(s) or entity(ies):

ALL-PURPOSE ACKNOWLEDGMENT

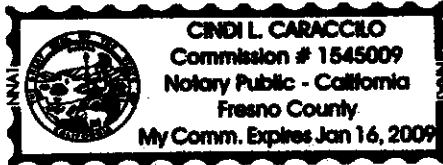
State of California

County of Fresno

On February 28 2006, before me, Cindi L. Caraccilo,
personally appeared, Rick Telegan,
~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to
be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Cindi L. Caraccilo
Notary Public



(Seal)

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL(S)
☐ OFFICER(S) (TITLE[S]):

☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ SUBSCRIBING WITNESS
☐ GUARDIAN/CONSERVATOR
☒ OTHER: manager

Chairperson _____

SIGNER IS REPRESENTING:
Name of person(s) or entity(ies):

OWNER:
BRIGHT DEVELOPMENT, a
CALIFORNIA CORPORATION

BY: Calvin E Bright
Calvin E. Bright

Its: President

Taxpayer I.D. No. 94-1741340

ADDRESS: 1620 N. Carpenter Rd. Bldg. B
Modesto, CA 95351

TELEPHONE: 209/526-8242

FACSIMILE: 209/578-1666

E-MAIL: nsoares@Bright-Homes.com

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Stanislaus

On, March 14, 2006, before me, Terri Brock, Notary Public,
personally appeared, Calvin E. Bright,
personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to
be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and
acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized
capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Terri Brock
Notary Public

(Seal)

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL(S)
☒ OFFICER(S) (TITLE(S)):
President
Bright Development
☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ SUBSCRIBING WITNESS
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

____ Chairperson _____

SIGNER IS REPRESENTING:
Name of person(s) or entity(ies):

EXHIBIT A
PROPERTY LEGAL DESCRIPTION AND MAP

A-1

EXHIBIT 'A'

**ANNEXATION TO THE CITY OF MERCED
FOR
ABSOLUTE, LLC & LEECO, LLC**

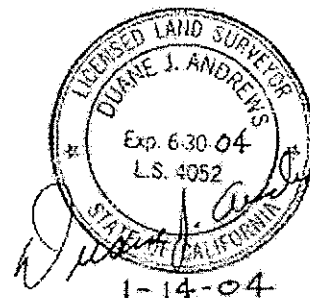
DESCRIPTION

All that certain real property, consisting of Parcel 2, as shown on the Parcel Map for Benber Company, recorded in Volume 45 of Parcel Maps at page 16, Merced County Records, in Section 5, Township 7, South Range 14 East, Mount Diablo Base and Meridian, in the County of Merced, State of California, described as follows:

Commencing at the southwest corner of said Section 5; thence N.00°44'00"E. along the west line of said section and the center line of a street known as 'G' Street, said centerline being the current east line of the city limits of the City of Merced, a distance of 1324.10 feet to the true POINT OF BEGINNING of this description; thence continuing N.00°44'00"E. along said west line of section 5 and said centerline of 'G' Street and said east line of city limits a distance of 1651.43 feet; thence N.89°55'02"E. along the westerly extension of and the north line of said Parcel 2 a distance of 2639.28 feet to the northeast corner of said Parcel 2; thence S.00°48'30"W. along the east line of said Parcel 2 a distance of 1651.32 feet to the southeast corner of said Parcel 2; thence S.89°54'51"W. along the south line of said Parcel 2 and its westerly extension a distance of 2637.13 feet to the POINT OF BEGINNING.

Containing: 100.00 Acres, more or less.

Subject to rights of record, if any.



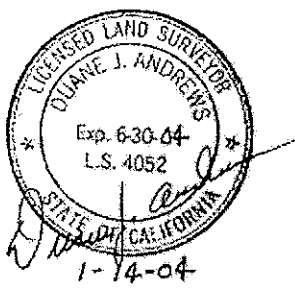
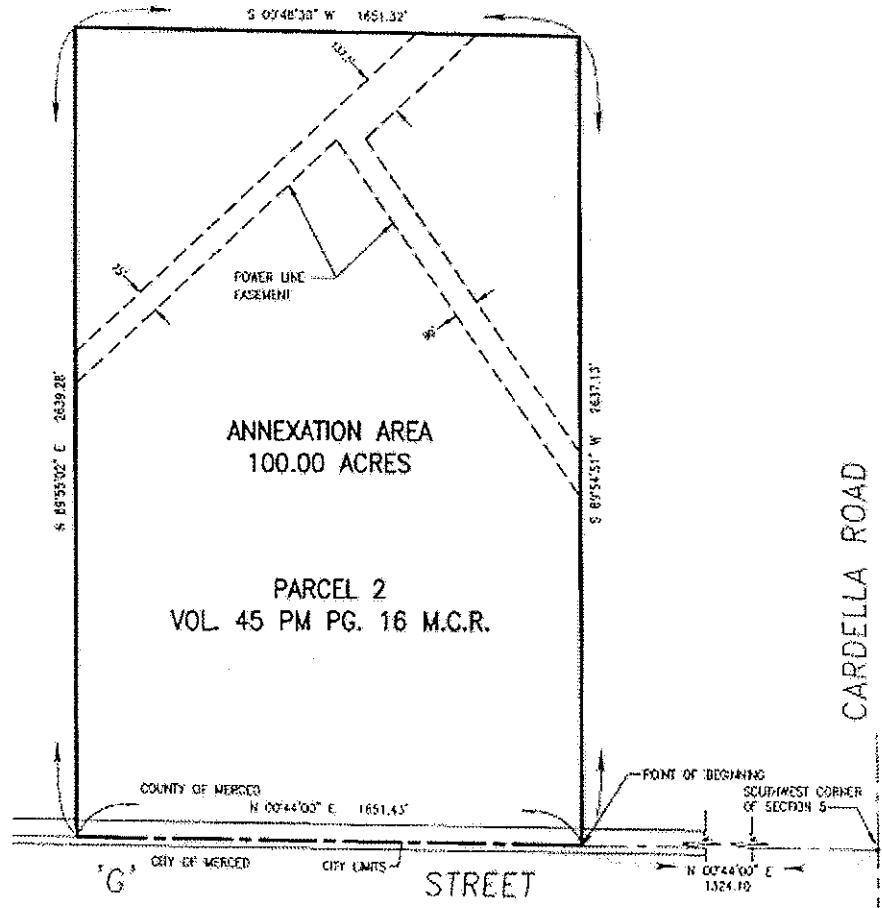
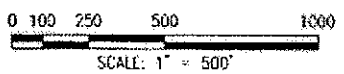


EXHIBIT 'B'
ABSOLUTE, LLC & LEECO, LLC ANNEXATION TO
THE CITY OF MERCED
SECTION 5, T.7S., R.14E., M.D.B. & M.



GOLDEN VALLEY
ENGINEERING & SURVEYING
1511 E. 20th Street • P.O. Box 349 • Merced, CA 95340
Phone: (209) 722-3200 • Fax: (209) 722-3214

03311-covax

EXHIBIT B
DEVELOPMENT APPROVALS

Annexation/Pre-Zoning No. 04-01

Establishment of Residential Planned Development (RP-D) No. 61

Expanded Initial Study No. 04-02 (Mitigated Negative Declaration and Mitigation Monitoring Program)

B-1

EXHIBIT C
LAND USE REGULATIONS

Merced Vision 2015 General Plan, as amended through
April 4, 2005

Charter of the City of Merced, as amended through
March 5, 2002

Merced Municipal Code, as amended through May 2005

City of Merced Design Standards, as amended through
November 15, 2004

Merced Specific Urban Development Plan (SUDP)

EXHIBIT D
PUBLIC BENEFITS

1. Owner shall participate in the upgrade to the sewer treatment plant in proportion to the growth attributable to the Project, as called for in Section 20.4. New development properties must be pledged against the future sewer bond. All development shall connect to the City sewer system and Owner shall pay all applicable connection fees.
2. Owner shall improve/upgrade/replace all existing County infrastructure (roads, utilities, etc.) within the Project consistent with City of Merced standards, specifically, but not limited to:
 - (a) Acquire and dedicate additional right-of-way for future widening of "G" Street.
 - (b) Install curbs, gutters, sidewalks, storm drains, and underground power lines (if applicable) on "G" Street and all collector, arterial, and interior roads within the annexation area.
 - (c) Underground overhead telephone lines on "G" Street.
 - (d) Install street lights as required on "G" Street and all collector, arterial, and interior roads within the annexation area.
 - (e) Install a 4-way traffic signal at the intersection of "G" Street and collector street into the annexation area, subject to applicable reimbursement.
 - (f) Install fire hydrants as required by the City's Fire Department.
3. Owner shall develop a storm drainage plan acceptable to the City, which may require an on-site storm retention/detention facility, and construct the facilities related thereto.

D-1

4. To the extent feasible, Owner shall connect all storm drains in the annexation area to storm drain lines in the Open Space area under high-voltage power lines that lead to "G" Street.
5. Owner shall pipe and cover the Merced Irrigation District irrigation canal running north/south and provide connection to school, public park and open space to allow for use of irrigation water for sprinklers at these facilities.
6. Owner shall connect all development to the City water system and pay all applicable connection fees.
7. Owner shall dedicate the northeast corner of the annexation area, identified as Open Space, for a public park.
8. Owner must agree to form a Mello-Roos Community Facilities District (CFD) for infrastructure and maintenance with waiver of protest rights.
9. Owner shall submit a development phasing plan that phases construction and development from south to north along with all infrastructure extensions.
10. Owner shall insure that at the time the first building permit is pulled that the City Fire Department's response time to an emergency in the annexation area is under 6 minutes.

EXHIBIT E
REQUEST FOR NOTICE OF DEFAULT UNDER
PRE-ANNEXATION DEVELOPMENT AGREEMENT

Pre-Annexation Development Agreement:
Specific Plan No. , /Name of Development/
Planning Application No.

Date:

To: City Clerk and Director of Development Services, City of Merced

Pursuant to Section 6(b) and (c) of the above-referenced Pre-Annexation Development Agreement, request is hereby made by as Mortgagee for the property (or portion thereof) to receive copies of any Notice of Default issued by City against Owner in accordance with the terms and conditions of such Pre-Annexation Development Agreement. Copies of any such Notices should be mailed to the following address:

_____ (Mortgagee)
_____ (Person/Department)
_____ (Address)
_____ (City/State/Zip)
_____ (Telephone No.)

A copy of this Notice should be filed with the project file to insure proper and timely notice is given. **Under the terms of said Pre-Annexation Development Agreement, _____ as Mortgagee is entitled to receive copies of any Notice of Default within ten (10) days of sending any such Notice to Owner. Failure to send any such Notice may have serious legal consequences for the City.**

This request is to remain in effect until revoked by _____ as Mortgagee or the Pre-Annexation Development Agreement is terminated.

The person executing this document on behalf of said Mortgagee warrants and represents that the entity he/she represents is a bonafide Mortgagee of said property and is entitled to receive copies of Notices of Default under said Pre-Annexation Development Agreement.

E-1

The undersigned declares the above information is true and correct under the penalty of perjury under the laws of the State of California.

Dated: __, 200__.

MORTGAGEE

By:

(signature)

(printed name)

Its: _____

(title)

[Notary required]

This Notice is to be sent to both the City Clerk and Director of Development Services for the City of Merced at 678 West 18th Street, Merced, California 95340 or such other location as Merced City Hall may be located in the future.

EXHIBIT F
ASSIGNMENT AND ASSUMPTION AGREEMENT

F-1

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

**Exempt Recording Per Gov't Code
Section 6103**

(Above for Recorder's Use Only)

**CONSENT TO ASSIGNMENT OF PRE-ANNEXATION DEVELOPMENT
AGREEMENT AND ASSUMPTION THEREOF**

This Consent to Assignment of Pre-Annexation Development Agreement and
Assumption Thereof ("Consent and Assumption Agreement") is made as of this ____ day
of _____, 2006 between the City of Merced, a California charter municipal
corporation ("City") and _____, a _____ ("Assignee").

RECITALS

A. The City of Merced executed a Pre-Annexation Development Agreement
entitled _____ dated _____, ("Agreement") a copy of which is
attached and incorporated by reference as Exhibit "1" pursuant to which City agreed with
_____ ("Owner/Assignor") to certain terms and
conditions related to the annexation and development of the area known as
_____ described in more detail in Exhibit "B" to Exhibit 1, attached

F-2

and incorporated by reference for a term commencing on _____ and ending on _____.

B. On _____, Assignor sold its rights and interests in the property to _____ (Assignee) and entered into an assignment and assumption agreement with _____.

C. On _____, Assignor assigned its interest in the Agreement to Assignee subject to the consent of the City.

D. Pursuant to Section 9.1 of the Agreement, City desires to consent to the assignment of the Agreement to Assignee, and Assignee desires to accept the assignment of the Agreement from Assignor, with the consent of the City, and assume all obligations of Assignor under the Agreement, including but not limited to, provision of all outstanding public benefits, commencing on _____.

Therefore, for good and valuable consideration, the receipt and adequacy of which are acknowledged, City and Assignee agree as follows:

SECTION 1. ASSIGNMENT. City consents to the assignment and transfer to Assignee of all right, title, and interest in the Agreement and Assignee accepts from Assignor all right, title, and interest subject to the terms and conditions set forth in this Consent and Assumption Agreement.

SECTION 2. ASSUMPTION OF AGREEMENT OBLIGATIONS. Assignee assumes and agrees to perform and fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor under the Agreement. Assignee specifically agrees to ALL of the following conditions:

- (a) Assignor no longer has a legal interest in all or any part of the Property except as a beneficiary under a deed of trust.
- (b) Assignor is not in default under the Agreement.
- (c) City has been provided with the notice and executed Assignment and Assumption Agreement required under Paragraph (b) of Subsection 9.1 of the Agreement..
- (d) The purchaser, transferee, or assignee provides City with security equivalent to or better than any security previously provided by Assignor to guarantee the installation of the improvements set forth on the improvement plans and subdivision agreement for the portion of the Project being transferred or assigned pursuant to the Subdivision Map Act and Sections 18.24.100, 18.24.110 and 18.24.150 of the Merced Municipal Code.
- (e) The Assignor or purchaser, transferee or assignee has reimbursed City for any and all City costs associated with Assignor's transfer of all or a portion of the Property.
- (f) The Assignor has reimbursed City for any and all costs relating to the Agreement.
- (g) The conditions in Section 20.4 (Sewer Facility Capital Expansion Improvement Bonds) of the Agreement have been completely satisfied, are no longer required, or the obligations under Section 20.4 have been completely and unequivocally assumed by the Assignor, purchaser, transferee or assignee.

SECTION 3. COVENANTS.

(a) City covenants that the copy of the Agreement attached as Exhibit 1 is a true and accurate copy of the Agreement as currently in effect and that there exists no other valid agreement affecting Assignor's rights and obligations under the Agreement.

(b) City covenants that the Agreement is in full effect and no defaults exist under the Agreement, nor any acts or events which, with the passage of time or the giving of notice or both, could become defaults.

SECTION 4. LITIGATION COSTS. If any litigation between City and Assignee arise out of this Consent and Assumption Agreement or concerning the meaning of interpretation of the Consent and Assumption Agreement, the losing party shall pay the prevailing party's costs and expenses of the litigation, including, without limitation, reasonable attorney fees.

SECTION 5. INDEMNIFICATION. Assignee agrees to indemnify City from and against any loss, costs, or expense, including attorney fees and court costs relating to the failure of Assignee to fulfill obligations under the Agreement, and accruing with respect to the period subsequent to the date of this Assignment.

SECTION 6. GOVERNING LAW. This Consent and Assumption Agreement shall be governed by and construed in accordance with California law.

The parties have executed this Consent and Assumption Agreement as of the date first above written.

"CITY"

CITY OF MERCED
A California charter municipal corporation

BY: _____
City Manager

ATTEST:
JAMES G. MARSHALL, CITY CLERK

BY: _____
Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

ACCOUNT DATA:

[To be entered by Requesting Department]:

Account No.: _____

Amount \$ _____

VERIFIED:

BY: _____
Finance Officer

Finance Entry: Contract No.: _____ Vendor No.: _____ P.O. No.: _____ Funds Available: _____

ASSIGNEE:

BY: _____
(Signature)

(print name)

Taxpayer I.D. No. _____

ADDRESS: _____

TELEPHONE: () _____

F-6

EXHIBIT G
PLANNING COMMISSION RESOLUTION

G-1

CITY OF MERCED
Planning Commission

Resolution #2871

WHEREAS, the Merced City Planning Commission at its regular meeting of March 22, 2006, held a public hearing and considered **Pending Annexation and Pre-zoning Applications #04-01 and Establishment of Residential Planned Development #61**, initiated by Golden Valley Engineers for applicants Bright-Homes; Absolute, L.L.C; and Leeco, L.L.C., property owners. This application involves annexing 100 acres into the City of Merced; prezoning the area R-1-5 (Single Family Residential) and Residential Planned Development #61. The annexation is located on the east side of "G" Street, approximately 1,300 feet north of Cardella Road; also known as Assessor's Parcel Numbers 006-030-036 through -039; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through S of Staff Report #06-24; and,

WHEREAS, 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 recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program (Exhibit A) regarding Expanded Initial Study #04-02 ("Absolute-Leeco Annexation"), and approval of Pending Annexation Application #04-01, Prezoning Application #04-01, and Establishment of Residential Planned Development (RP-D) #61, subject to the following conditions:

1. Approval of the Pending Annexation/Prezoning/Establishment of Residential Planned Development #61 is subject to the applicants entering into a written Pre-Annexation Development 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 regional traffic impact fees, a Parsons Avenue impact

PLANNING COMMISSION RESOLUTION #2871

Page 2

March 22, 2006

- fee, Mello-Roos, etc.; said agreement to be approved by the City Council prior to the adoption of the ordinance or resolution.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the Engineering Department.
 3. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
 4. The developer/applicant shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
 5. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between

City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

6. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
7. As part of subsequent Tentative Subdivision Map entitlement processes, the applicants shall dedicate sufficient land along "G" Street (project frontage) to provide for a 128-foot right-of-way and construct their fair share of "G" Street (including safe transitions to the north and south) consistent with the Figure 4.4 of the *Merced Vision 2015 General Plan* (Major Arterial Cross-Section). All the "G" Street improvements required for this annexation (amounting to 1,651 feet of frontage), shall be completed in one construction project, and not be divided by ownership or tentative maps. These improvements shall include frontage improvements, traffic signals, the piping of the Six Mile Drain and the under-grounding of the existing telephone lines (details to be worked out at the tentative subdivision map process). Consistent with project Mitigation Measure 11-1, a minimum of 15-feet of additional landscaping together with a six-foot tall decorative wall (approved by City Planning Staff) shall be placed to the outside of the right-of-way to the east. The project infrastructure improvement plans for "G" Street may include a meandering sidewalk. Consistent with the City's Water Efficient Landscaping & Irrigation Ordinance (MMC 17.60), the landscaping along "G" Street shall be comply with the water conservation measures specified in said ordinance.
8. Collector street locations in subsequent Tentative Subdivision Map and Conditional Use Permit entitlements shall be provided consistent with the adopted circulation plan for this project (Attachment C of

PLANNING COMMISSION RESOLUTION #2871

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Staff Report #06-24), as well as with the local "road design standards" of Planned Development #61 (Attachment F of Staff Report #06-24 – Exhibit 1).

9. As part of subsequent Tentative Subdivision Map entitlement processes, dedication of land for use as a community park, neighborhood park and the storm-drainage / open space corridor shall be provided consistent with the proposed land use designations for this project (Attachment D of Staff Report #06-24).
10. Conceptual plans for the off-street bike path route, drainage basins and aesthetically designed open space within the PG&E transmission line easements, shall be included with subsequent Tentative Subdivision Map applications. Details, including any requirements for pedestrian/bike under-crossings, will be worked out during the mapping process
11. Concurrent with any application for a Conditional Use Permit or Tentative Subdivision Map within the "Village Residential" land use designation, the applicant shall submit a plan to the City showing the minimum densities necessary to attain an average minimum 10 units per acre gross density within the entire "Village Residential" site of the "Absolute-Leeco Annexation," along with a signed statement from the owner(s) of the other parcel(s) in the "Village Residential" site acknowledging the proposed density and of their obligation to construct a project on the remaining parcel(s) that results in an average minimum 10 units per acre gross density within the entire "Village Residential" site of the "Absolute-Leeco Annexation."
12. Except as may be changed by project conditions of approval herein, Residential Planned Development #61 shall be constructed/designed generally as shown on Attachment F (of Staff Report #06-24 - Planned Development Standards, including "road design standards"). The Development Services Director has authority to permit minor modifications to these approved plans.

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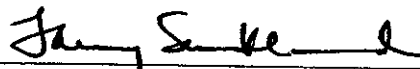
Upon motion by Commissioner Amey, seconded by Commissioner Burr,
and carried by the following vote:

AYES: Commissioners Acheson, Burr, Conte, Amey, Ward, and
Vice-Chairman Fisher

NOES: None

ABSENT: Chairman Shankland

Adopted this 22nd day of March, 2006



Chairman, Planning Commission
of the City of Merced, California

ATTEST:


Secretary

Exhibit A – Mitigation Monitoring Program

n:\shared:\planning\PC Resolutions:\#2871 Absolute-Leeco Annex

**EXPANDED INITIAL STUDY #04-02
for
ABSOLUTE-LEECO ANNEXATION TO
THE CITY OF MERCED**

***Appendix A
Mitigation Monitoring Program
Document Date: 2-15-06***

MITIGATION MONITORING CONTENTS

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own "Mitigation Monitoring and Reporting Program" (MMC 19.28). The City's program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor's Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

- 1) The requirements of the adopted mitigation monitoring program for the Absolute-Leeco Project shall run with the real property that is the subject of a General Plan Amendment/Annexation to the City of Merced. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

EXHIBIT A

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

GENERAL PLAN MITIGATION MEASURES

As a second tier environmental document, the *Expanded Initial Study for Absolute-Leeco Annexation to the City of Merced* incorporates some mitigation measures adopted as part of the *Merced Vision 2015 General Plan Program Environmental Impact Report* (SCH# 95082050), as mitigation for potential impacts of the Project. Therefore, following the Absolute-Leeco Annexation Mitigation Monitoring Checklist is a list of these relevant General Plan mitigation measures.

NONCOMPLIANCE COMPLAINTS

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

MONITORING MATRIX

The following pages provide a series of tables identifying the mitigation measures proposed specifically for the Absolute-Leeco Annexation. The columns within the tables are defined as follows:

Mitigation Measure:	Describes the Mitigation Measure (referenced by number).
Timing:	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
Agency/Department Consultation:	This column references any public agency or City department with which coordination is required to satisfy the identified mitigation.
Verification:	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

Absolute-Leeco Annexation Mitigation Monitoring Checklist

Project Name: _____ File Number: _____
Approval Date: _____ Project Location: _____
Brief Project Description: _____

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
2. AGRICULTURAL RESOURCES 2-1 A provision shall be recorded by the applicants/developer or successors, at time of sale of any residentially-zoned property within the project that lies within 1,000 feet of the external boundary of any non-project property which currently has an active agricultural operation (including 4-H projects), or has had an agricultural operation on it during the calendar year preceding the year within which the sale takes place. This provision shall notify the buyer(s) and any subsequent owner(s) of the possible inconvenience or discomfort of farming operations, arising from the use of agricultural chemicals, including pesticides, and fertilizers, as well as from the pursuit of agricultural operations including plowing, spraying, and harvesting which occasionally generate dust, smoke, noise and odor, and the priority to which Merced County places on agricultural operations.	<i>Building Permits</i>	<i>City Planning & Inspection Services</i>	

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
3) AIR QUALITY			
3-1. The design and construction of the Project within the Village Residential Portion of the Project shall adhere to the <i>Merced Vision 2015 General Plan</i> "Urban Design Goals, Policies and Actions" (Chapter 6).	<i>Tentative Subdivision Map</i>	<i>City Planning & Inspection Services</i>	
3-2. The high-voltage power line easements shall be developed with a Class I Bike Path / pedestrian way, open space and linear open space storm drain basin, that provides residents an off-street connection to neighborhood parks, schools and commercial areas.	<i>Tentative Subdivision Map</i>	<i>City Planning & Inspection Services</i>	
3-3. Roads between the core-commercial area (in the Bandoni Annexation Project Area to the south) and adjacent and surrounding residential areas shall be provided in a manner where they converge at the core commercial area south of the annexation area. In order to implement this design, the Project shall adhere to the General Plan policies as depicted in the Project's "Planned Development Standards," including its road design standards (Appendix F).	<i>Tentative Subdivision Map</i>	<i>City Planning & Inspection Services</i>	

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
3-4. Development within the Village Residential areas shall be "pedestrian in scale" and shall provide direct and easy access to the core commercial area and transit stop. Residential buildings in the urban village shall "front" onto the street (no long uninterrupted walls). Building facades should be varied and articulated to provide visual interest to pedestrians. All through streets shall contain park strips with shade trees. In order to implement this design, the Project shall adhere to these General Plan policies as depicted in the Projects "Planned Development Standards," including its road design standards (Appendix F).	Conditional Use Permit	City Planning & Inspection Services	
5) CULTURAL RESOURCES			
5-1. If evidence of archaeological artifacts or paleontologic resources are discovered during construction, all operations within an area at and adjacent to the discovered site shall halt until a qualified archaeologist determines the extent of significance of the site.	Building Permits	City Planning	
5-2. If evidence of human remains are discovered during construction, all operations at and adjacent to the discovered site shall halt, and the Merced County Coroner shall be contacted.	Building Permits	City Planning	

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
5-3. On-site preservation of a resource is the preferred alternative. Preserving a cultural deposit maintains the artifacts in context and may prevent inadvertent discovery of, or damage to, human burials. Preservation may be accomplished through a number of means such as capping or covering the site with a layer of soil, fencing the site area, and/or incorporation of the resource in a park area.	<i>Building Permits</i>	<i>City Planning</i>	
11) NOISE			
11-1. Prior to or concurrent with submittal of a tentative subdivision map, the applicant shall provide a project development plan that includes a six-foot tall wall and a landscaped area between said wall and edge of the "G" Street right-of-way (behind the sidewalk) of no less than 15 feet.	<i>Tentative Subdivision Map</i>	<i>City Planning & Inspection Services</i>	

Certificate of Completion:

By signing below, the environmental coordinator confirms that the required mitigation measures have been implemented as evidenced by the Schedule of Tasks and Sign-Off Checklist, and that all direct and indirect costs have been paid. This act constitutes the issuance of a *Certificate of Completion*.

Environmental Coordinator

Date

APPLICABLE MITIGATION MEASURES OF THE GENERAL PLAN EIR— ABSOLUTE-LEECO ANNEXATION

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
<i>Plant/Animal Life</i>			
3-a) When site-specific development proposals are submitted to the City for review and action, surveys should be conducted for special-status species prior to the disturbance of potentially suitable habitat. All surveys will be conducted in accordance with applicable state and federal guidelines.	<i>Annexation</i>	<i>City Planning</i>	<i>Completed in March 2004 and 2005 with Biological Resources Inventory by Live Oaks Associates (Appendix D)</i>
<i>Traffic/Circulation</i>			
7-a) Appropriate traffic studies shall be prepared for all development projects which can be expected to reduce a road segment or intersection levels of service below "D."	<i>Annexation</i>	<i>City Planning</i>	<i>Not Applicable (roads operating at LOS D or better.</i>
7-b) The City shall require all development proposals to contribute, based on their proportionate share of impact, to circulation system improvements necessary to maintain at least a level of service "D" on all road segments and intersections impacted by the development project.	<i>Certificate of Occupancy</i>	<i>City Planning</i>	
<i>Public Facilities/Services</i>			
8-c) Site designs will need to be reviewed to assure that development does not hinder efficient and cost-effective public services delivery.	<i>Tentative Subdivision Map</i>	<i>City Planning</i>	
8-d) Development projects will be required to pay public facilities impact fees as established by the City in accordance with the requirements of State law.	<i>Certificate of Occupancy</i>	<i>City Planning</i>	



ADMINISTRATIVE REPORT

AGENDA

ITEM: _____

MTG

DATE: _____

TO: James G. Marshall, City Manager

FROM: Bill King, Principal Planner

DATE: April 17, 2006

SUBJECT: Pending Annexation and Pre-zoning Applications #04-01 and Establishment of Residential Planned Development #61, initiated by Golden Valley Engineers for applicants Bright-Homes; Absolute, L.L.C; and Leeco, L.L.C., property owners. This application involves annexing 100 acres into the City of Merced; prezoning the area R-1-5 (Single Family Residential) and Residential Planned Development #61. The annexation is located on the east side of "G" Street, approximately 1,300 feet north of Cardella Road.

RECOMMENDATION:

- a) Adopt a motion (by minute order) to adopt a Mitigated Negative Declaration regarding Expanded Initial Study #04-02 (Enclosure #1 of Planning Commission Staff Report, Attachment 5, pages 25-258; together with the Mitigation Monitoring Program, Exhibit A of Attachment 2, pages 9-15); and,
- b) Adopt Resolution #06-__, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, FOR APPLICATION BY THE CITY COUNCIL OF THE CITY OF MERCED TO THE LOCAL AGENCY FORMATION COMMISSION FOR THE ANNEXATION OF UNINHABITED PROPERTY LOCATED ON THE EAST SIDE OF "G" STREET, APPROXIMATELY 1,300 FEET NORTH OF CARDELLA ROAD" (Attachment 6, pages 259-262); and,
- c) Introduce Ordinance #_____, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING THE OFFICIAL ZONING MAP BY PREZONING CERTAIN PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF "G" STREET, APPROXIMATELY 1,300 FEET NORTH OF CARDELLA

ROAD AS LOW DENSITY RESIDENTIAL (R-1-5)" (Attachment 7, pages 263-266); and,

- d) Introduce Ordinance #_____, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, ESTABLISHING RESIDENTIAL PLANNED DEVELOPMENT #61 BY DESIGNATING CERTAIN PROPERTY LOCATED ¼ MILE EAST OF "G" STREET AND ¼ MILE NORTH OF CARDELLA ROAD (SOUTH OF PG&E TRANSMISSION TOWER EASEMENTS) AS RESIDENTIAL PLANNED DEVELOPMENT #61 (R-PD #61)" (Attachment 8, pages 267-276); and,
- e) Introduce Ordinance #_____, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, APPROVING A PRE-ANNEXATION DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MERCED AND ABSOLUTE, LLC; LEECO, LLC; BP INVESTORS, LLC; AND BRIGHT DEVELOPMENT, A CALIFORNIA CORPORATION FOR THE ABSOLUTE LEECO ANNEXATION (Attachment 9, pages 277-355); and,
- f) Approve the Pre-Annexation Development Agreement and authorize the City Manager to sign all related documents.

POSSIBLE CITY COUNCIL ACTIONS

- 1) Approve, as recommended by Planning Commission and Staff; or,
- 2) Deny the Application; or,
- 3) Refer back to the Planning Commission for reconsideration of specific items as requested by Council; or,
- 4) Continue item to a future Council meeting (date and time to be specified in motion).

AUTHORITY/CODE SECTION

The State of California's Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 outlines the procedures governing the annexation of uninhabited territory to local jurisdictions. Title 19 of the Merced Municipal Code outlines environmental review procedures and Title 20 of the Merced

Municipal Code (Zoning) regulates the use of land within the "Low Density Residential" (20.10), and "Planned Development" (20.42) zones. Pre-annexation development agreements are authorized by Government Code Section 65864 *et seq.*

DISCUSSION

Background

This is a request to annex and prezone approximately 100-acres in northeast Merced, including the establishment of Residential Planned Development #61 within the annexation area. The proposed zoning districts are consistent with the Land Use Diagram of the *Merced Vision 2015 General Plan*. The entire area of the annexation area is represented by the applicants; there are no additional parcels to be added to the annexation area.

During 2004 and 2005, the City worked with the applicant, Project property owners, Merced City School District, and property owners and/or their representatives of lands adjacent to the annexation site to devise a land use plan consistent with the *Merced Vision 2015 General Plan*. The objective of the meetings was to determine appropriate locations for residential, park and school uses. City Staff utilized the existing PG&E transmission corridor as a unifying feature of the neighborhood through creation of a linear open space corridor occupied by an off-street bike path that connects the schools and parks with the neighborhood. The resultant area land use plan (Attachment 5, page 42) is being used as a guide for development. A separate annexation proposal to the east of the Absolute-Leeco Annexation (Bandoni II Annexation) is now under review in the Planning Department, and it is consistent with this land use plan.

Review Criteria

The Project was reviewed against the following criteria:

- 1) Annexation Criteria / General Plan Implementing Action UE-1.3.f (see analysis in Planning Commission Staff Report (Attachment 5, pages 31-32);

- 2) Land Use Diagram of the *Merced Vision 2015 General Plan*;
- 3) Required Findings for Establishment of Planned Developments (Attachment 8, pages 267-276); and,
- 4) Urban Design Chapter of the *Merced Vision 2015 General Plan*.

Staff and the Planning Commission recommend that the City Council find that the Project is consistent with these criteria.

Pre-Annexation Development Agreement

A Pre-Annexation Development Agreement to insure the availability of public services, namely the City's Wastewater Treatment Plant, is a required part of the Project. The applicants have agreed to provide additional public benefits as specified in Attachment 9, pages 277-355).

Planning Commission Recommendation

On March 22, 2006, the Planning Commission held a public hearing on the proposed Annexation/Rezoning and Establishment of Residential Planned Development #61. Other than the applicant, no public testimony was provided. The Planning Commission recommended to the City Council by a 6-0-1 vote (6 yes, 0 no, 1 absent) approval of the Annexation, Rezoning, and Establishment of Residential Planned Development #61 (Planning Commission Resolution #2871, Attachment 2, pages 4-15, and Planning Commission Minutes, Attachment 4, pages 23-24).

Environmental Clearance

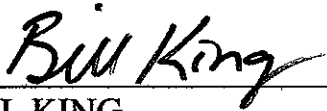
The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA) and a Mitigated Negative Declaration has been prepared (see Expanded Initial Study #04-02—Enclosure #1 of the Planning Commission Staff Report, Attachment 5, pages 62-258).

Summary

Both the Planning Staff and Planning Commission recommend approval of this Project. The Planning Commission concurred with staff that the proposed annexation is consistent with the review criteria.

RESPECTFULLY SUBMITTED:

APPROVED:


BILL KING,
PRINCIPAL PLANNER


JACK D. LESCH,
DIRECTOR
OF DEVELOPMENT
SERVICES

REVIEWED AND APPROVED:

JAMES G. MARSHALL
CITY MANAGER

ATTACHMENTS:

- 1) Vicinity Map and Annexation Map (pages 1-3)
- 2) Planning Commission Resolution #2871 (pages 4-15)
- 3) Planning Commission Resolution #2872 (pages 17-22)
- 4) Planning Commission Minute Excerpts from March 22, 2006 (pages 23-24)
- 5) Planning Commission Staff Report #06-24 (pages 25-61) & Enclosure #1 for Env. Rev. #04-02 (pages 62-258)
- 6) Draft City Council Resolution (Annexation) (pages 259-262)
- 7) Draft Ordinance (R-1-5 Rezoning) (pages 263-266)
- 8) Draft Ordinance (RPD #61 Rezoning) (pages 267-276)
- 9) Draft Ordinance for Development Agreement (pages 277-355)