

## PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023,  
by and between the City of Merced, California Charter Municipal Corporation ("Seller") and  
Dkota Investments, Inc., a Texas Corporation ("Buyer").

### WITNESSETH

WHEREAS, Real properties owned by the Seller and identified as a portion of APN 059-420-013 in the Airport Industrial Park (more fully described on Attachment "A" hereto) have been declared surplus, hereinafter the "Subject Property;" and,

WHEREAS, Buyer desires to purchase the Subject Property (2.74 acres) for the location of a 11,478 square foot warehouse building to be used by an industrial user.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, promises, and agreements herein 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:

SECTION 1. PURCHASE & SALE. Seller agrees to sell and Buyer agrees to purchase the Subject Property.

SECTION 2. PURCHASE PRICE. The purchase price for Subject Property shall be Three Hundred Eighty-Three Thousand Six Hundred Dollars (\$383,600.00) for approximately 2.74 acres.

a. Deposit: Buyer will deposit the sum of Thirty-Eight Thousand Three Hundred Sixty Dollars (\$38,360.00) into escrow within five (5) business days following the

mutual execution of this Agreement. The deposit shall become “non-refundable” at the end of the due diligence period.

b. **Balance of Purchase Price:** Buyer shall have until close of escrow (“Final Payment Date”) to pay the balance of the purchase price of Three Hundred Forty-Five Thousand Two Hundred Forty Dollars (\$345,240.00) to Seller deposited with the Escrow holder as listed in Section 3.

**SECTION 3. ESCROW.** Escrow shall open on the Property within ten (10) business days following mutual execution of this Agreement at a Title Company in Merced, California selected by Buyer, and shall close within sixty (60) days thereafter, subject to the terms and conditions of this Agreement. Costs of escrow shall be in accordance with the normal practices in Merced County.

**SECTION 4. NO BUILDINGS OVER LOT LINES.** Buyer expressly acknowledged and agrees that buildings or other structures cannot be built over lot-lines. Buyer shall be responsible for completing and paying all costs for a parcel map.

**SECTION 5. ASSIGNMENT.** This Purchase and Sale Agreement shall be binding upon and inure to the benefit of the respective parties hereto and to their respective heirs, transferees, successors, assignee, partners, and legal representatives. Neither this Purchase and Sale Agreement nor any part thereof shall be assignable except with the prior written consent of the other party hereto. Such consent shall not be unreasonably withheld. Any attempted assignment or delegation of the rights and responsibilities under this Purchase and Sale Agreement not executed in writing by the other party hereto shall constitute a material breach of this Purchase and Sale Agreement and shall be null and void.

SECTION 6. SUBJECT TO CC&R'S, DEED RESTRICTIONS AND OTHER OBLIGATIONS. This Purchase and Sale Agreement is subject to all the covenants, conditions, terms, and provisions of that certain Declaration of Protective Covenants dated April 3, 1972, recorded in the Office of the County Recorder of the County of Merced on December 21, 1972, in Volume 1910 of the Official Records at Pages 694 –712, and is conditioned upon Buyer's compliance with the development recommendations and suggestions of the Merced Site Plan Approval Committee. At the close of this transaction, Buyer will be issued a Grant Deed containing deed restrictions which shall be in substantially the form as set forth on Attachment "B," attached hereto.

SECTION 7. ZONING, PERMITTED USES, & UTILITY SELECTION. The Subject Property is currently zoned Light Industrial (I-L) and is in the I-L Land Use District of the City of Merced. The Subject Property is also located within the Merced Airport Industrial Park. The proposed layout of the parcels of the Subject Property are as set forth on Attachment "C," which is attached hereto and incorporated herein by this reference as if set forth at length herein.

The proposed "Project," i.e., a 11,478 square foot warehouse building, is a principally permitted and consistent use within the Light Industrial land use district of the City of Merced as set forth in Section 20.34 of the Merced Municipal Code, a copy of which is attached hereto and incorporated herein by this reference as Attachment "D," and shall be used for the purpose of manufacturing consistent with the I-L District. The Subject Property is also located within the Industrial District land use designation as contained in Chapter 3 of the City of Merced's Vision 2030 General Plan.

SECTION 8. COMMENCEMENT OF CONSTRUCTION; SCHEDULE. Buyer agrees to commence construction of the main building structure(s) required for the Project on the

Subject Property within twelve (12) months of the close of escrow and to thereafter diligently pursue its completion. It is hereby agreed that failure of Buyer to commence construction of the main building structure(s) required for the Project within said twelve (12) month period shall give Seller the right and option to repurchase the Subject Property. The price for Seller's option to repurchase shall be the purchase price paid by the original Buyer without interest, appreciation, or reimbursement for any improvements, costs, expenses, or City, County, or other taxes or assessments levied or assessed against the Subject Property. Prior to completion of the main building structure(s) required for the Project on the Subject Property, Buyer agrees not transfer title to the Subject Property to another person or entity without Seller's prior written consent.

SECTION 9. REAL ESTATE COMMISSIONS. Buyer is represented in this transaction by Jessica Leitch of HomeSmart Professionals. Seller shall pay, upon close of escrow, a commission of six percent (6%) to Jessica Leitch of HomeSmart Professionals. Buyer represents warrants to Seller that there are no other real estate or similar commissions due or owed for this transaction and agrees that any other commissions due or owed as a result of Buyer's close of escrow on the Subject Property shall be the financial responsibility of the buyer.

SECTION 10. DUE DILIGENCE & ENVIRONMENTAL STUDIES.

a. Within five (5) days after the mutual execution of this Purchase and Sale Agreement, or as soon thereafter as possible through reasonable diligence on behalf of Seller, Seller shall furnish Buyer with a preliminary California Land Title Association report of the title to the Subject Property and each document shown as an exception or encumbrance in the report. This shall be done at the expense of Seller. Within fifteen (15) days after the delivery of the title report and related documents to Buyer, Buyer shall notify Seller in writing of any objection to

any exception therein. Buyer's failure to object in this matter to any exception shall be an approval by Buyer of that exception.

b. Buyer's acceptance of the condition of the Subject Property, and any other matter affecting the Subject Property, is a contingency of this Purchase and Sale Agreement. Buyer and Buyer's agents and representatives, shall have unrestricted access to the property to conduct all inspections, investigations, tests, surveys, analysis, and other studies, immediately upon execution of this Purchase and Sale Agreement.

c. Therefore, Buyer shall have thirty (30) days from the date this Purchase and Sale Agreement is mutually executed to undertake and complete any and all studies, reports, investigations, inspections, and analysis Buyer deems necessary regarding the Subject Property. All studies, reports, investigations, and analysis undertaken by Buyer or any representative of Buyer shall be performed at Buyer's own and sole cost and expense.

SECTION 11. NOTICE. All notices required or available to be sent pursuant to this Purchase and Sale Agreement shall be delivered by either first-class certified mail, return receipt requested, and properly addressed with correct postage fully paid thereon or by personal delivery to the individuals designated above at the address designated below. All mailed notices shall be deemed delivered within three (3) business days of deposit in the U.S. Mail and personal delivery shall be deemed delivered upon actual delivery thereof at the addresses set forth below:

SELLER: City of Merced  
Attn: City Clerk  
678 West 18<sup>th</sup> Street  
Merced, California 95340

BUYER: Dkota Investments, Inc.  
4848 Lemmon Avenue, Suite 622  
Dallas, Texas 75219

SECTION 12. AS-IS ACQUISITION. Buyer represents and warrants that as of the Close of Escrow Buyer will have satisfied itself as to the environmental conditions affecting the Subject Property and all possible adverse consequences of such environmental conditions, such as legal and economic adversities affecting the Subject Property, and the suitability of the Subject Property for the purposes intended by Buyer. Buyer acknowledges and agrees that Buyer is acquiring the Subject Property subject to all existing laws, ordinances, rules and regulations, and that neither Seller nor any of Seller's agents, representatives and attorneys (collectively, "Seller's Agents") have made any warranties, representations or statements regarding the availability of any approvals, or the laws, ordinances, rules or regulations of any governmental or quasi-governmental body, entity, district or agency having authority with respect to the ownership, possession, development, occupancy, condition and/or use of the Subject Property except as expressly provided herein. Buyer moreover acknowledges that (i) Buyer has entered into this Agreement with the intention of relying upon its own or its experts' investigation of the environmental conditions affecting the Subject Property and all possible adverse consequences of such environmental conditions, such as legal and economic adversities affecting the Subject Property, including, without limitation, the compliance of the Subject Property with laws and governmental regulations and the operation of the Subject Property, and (ii) that Buyer is not relying on any representations and warranties made by Seller or anyone acting or claiming to act on Seller's behalf concerning the Subject Property except as expressly provided herein. Buyer further acknowledges that it has not received from Seller any accounting, tax, legal, architectural, engineering, property management or other advice with respect to this transaction and is relying upon the advice of its own accounting, tax, legal, architectural, engineering, property management and other advisors. Buyer shall purchase the

Subject Property in its "As-Is" condition at the Close of Escrow and assumes the risk that adverse environmental conditions affecting the Subject Property and all possible adverse consequences of such environmental conditions, such as legal and economic adversities affecting the Subject Property, may not have been revealed by its investigations. Seller shall have no liability for any subsequently discovered defects, whether latent or patent.

Buyer agrees that, from and after the Close of Escrow, Buyer, for itself and its agents, affiliates, successors and assigns, shall release and forever discharge Seller, its officials, agents, employees, affiliates, successors and assigns from, and waives any right to proceed against Seller for, any and all rights, claims, and demands at law or in equity relating to the environmental conditions affecting the Subject Property and all possible adverse consequences of such environmental conditions, such as legal and economic adversities affecting the Subject Property.

Such release shall survive the Close of Escrow. Buyer has read and been fully advised of California Civil Code Section 1542, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

and Buyer hereby expressly waives any and all rights and the benefits of said section or any similar section of the laws of any other applicable jurisdiction.

**Buyer's initials:** RL

**SECTION 13. SELLER'S REPRESENTATIONS.** Seller hereby represents to Buyer that Seller has full power and authority and has taken all action necessary to execute this Agreement and to fulfill all of its obligations hereunder.

**EXCEPT AS PROVIDED IN THIS PARAGRAPH 15 ABOVE, SELLER IS MAKING NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR**

IMPLIED, REGARDING THE PROPERTY OR MATTERS AFFECTING THE SUBJECT PROPERTY, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL CONDITION OF THE SUBJECT PROPERTY, TITLE TO OR THE BOUNDARIES OF THE SUBJECT PROPERTY, SOIL CONDITION, HAZARDOUS WASTE, TOXIC SUBSTANCE OR OTHER ENVIRONMENTAL MATTERS, COMPLIANCE WITH HEALTH, SAFETY, LAND USE AND ZONING LAWS, REGULATIONS AND ORDERS, TRAFFIC PATTERNS OR ANY OTHER INFORMATION RELATING TO THE SUBJECT PROPERTY.

SECTION 14. INTERPRETATION. This Purchase and Sale Agreement shall be governed by and construed in accordance with the laws of the State of California. The use of the singular herein includes the plural, and the use of the neuter herein includes the masculine and/or feminine, as the context may require. The captions of the Sections and Subsections of this Purchase and Sale Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

SECTION 15. NO PRESUMPTION RE DRAFTER. The parties hereto acknowledge and agree that the terms and provisions of this Purchase and Sale Agreement have been negotiated and discussed between the parties and their attorneys, and this document reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Purchase and Sale Agreement, and therefore no presumption for or against validity or as to any interpretations hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this document.

SECTION 16. RELATIONSHIP OF PARTIES. Nothing contained in this Purchase and Sale Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between Seller and Buyer or their agents, employees or contractors.



Except as either party may specify in writing, neither party shall have the authority to act as an agent of the other party or to bind the other party to any obligation.

SECTION 17. NO THIRD PARTY BENEFICIARIES. The parties hereto intend not to create rights in, or to grant to any third party as a beneficiary of the agreement or of any duty, covenant, obligation, or undertaking established herein.

SECTION 18. ENTIRE AGREEMENT. This Purchase and Sale Agreement is a fully integrated agreement that contains the complete, final, entire, and exclusive expression of the agreement and understanding of the parties hereto. This Purchase and Sale Agreement supersedes and replaces all negotiations, and all proposed agreements, whether oral or written, between the parties hereto regarding, arising out of, or relating to the subject matter hereof. Each party acknowledges that it has read this Purchase and Sale Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by any of the other, or their attorneys or its representatives, other than as expressly set forth within this Purchase and Sale Agreement.

SECTION 19. AMENDMENTS IN WRITING. This Purchase and Sale Agreement may be amended or modified only by a written agreement executed by or on behalf of each of the parties hereto and approved and adopted as required by law. Any attempted amendment not in compliance with the provisions of this Section shall be null and void.

SECTION 20. WAIVER. Any waiver by either party of any obligation or condition in this Purchase and Sale Agreement must be in writing. No waiver will be implied from any delay or failure by either party to take action on any breach or default of the other party or to pursue any remedy allowed under this Purchase and Sale Agreement or applicable law. Any extension of time granted to either party to perform any obligation under this Purchase and Sale Agreement

shall not operate as a waiver or release from any of its obligation under this Purchase and Sale Agreement. Consent by either party to any act or omission by the other party shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the other party's written consent to future waivers.

SECTION 21. COUNTERPARTS. This Purchase and Sale Agreement may be executed in counterparts and when each party has signed and delivered at least one such counterpart to the other parties hereto, each counterpart shall be deemed an original, and all counterparts taken together will constitute one and the same agreement, which will be binding and effective as to the Seller and Buyer. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Purchase and Sale Agreement is in the physical possession of the party seeking enforcement thereof.

SECTION 22. 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 governmental or business 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, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal Corporation

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

ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY: \_\_\_\_\_  
Deputy City Clerk

APPROVED AS TO FORM:

BY: K. Flores 5/23/23  
Contract City Attorney

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Office

BUYER  
DKOTA INVESTMENTS, INC.,  
A Texas Corporation

BY: [Signature]  
Signature

Russell Leitch

\_\_\_\_\_  
Print Name

Its: President

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

\_\_\_\_\_  
Print Name

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

Taxpayer I.D. No. 75-2388497

ADDRESS: 4848 Lemmon Ave., Suite 622  
Dallas, Texas 95219

TELEPHONE: 214 668-8194

FAX: \_\_\_\_\_

E-MAIL: russell@dkota.biz

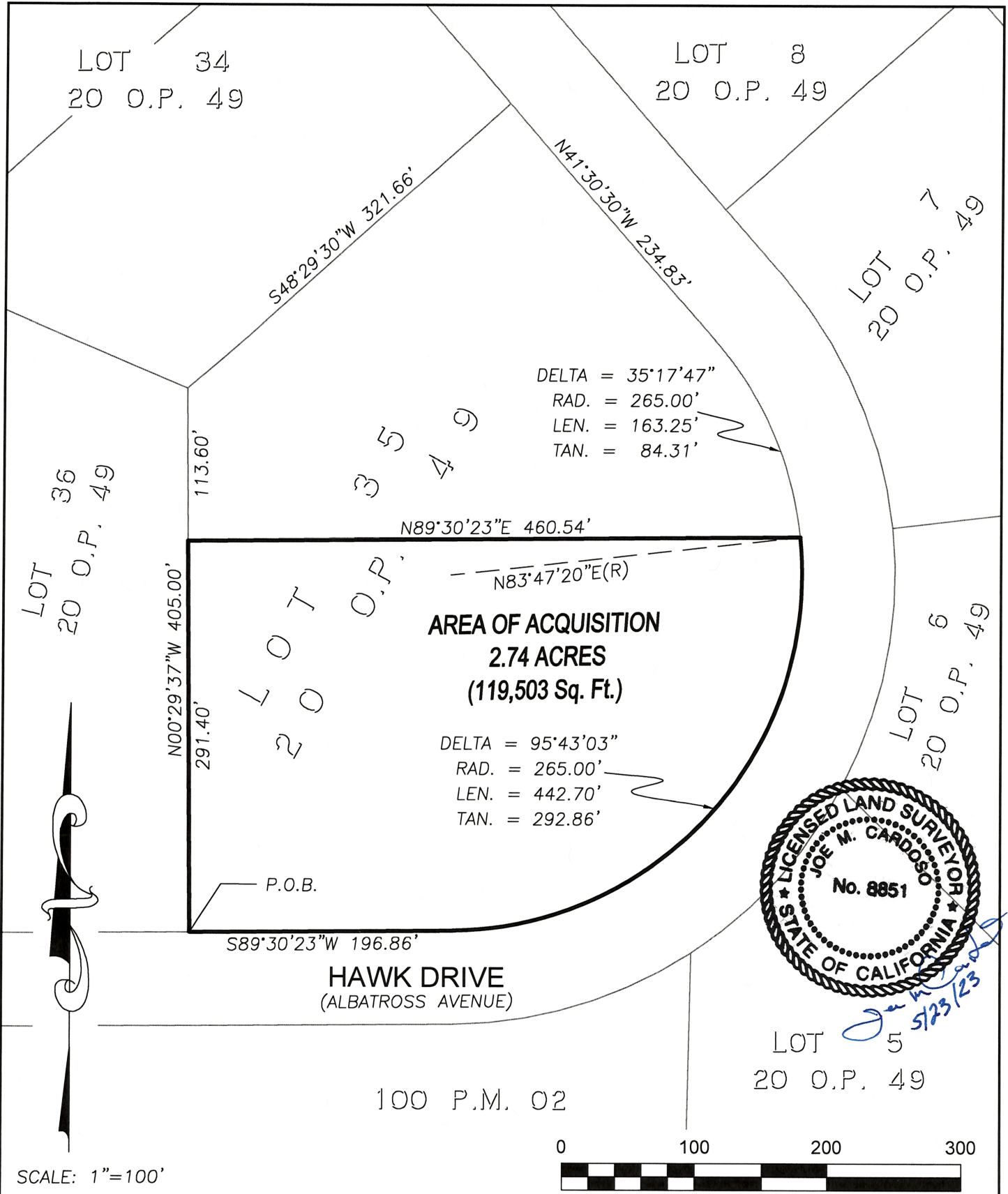
# ATTACHMENT A

A parcel of land situated in the Northwest One Quarter (NW1/4) of Section 35, Township 7 South, Range 13 East, M.D.B.& M., City of Merced, County of Merced, State of California, said parcel of land being a portion of Lot 35, as said Lot 35 is delineated on that certain map entitled "MAP OF MERCED AIRPORT INDUSTRIAL PARK" recorded on October 16, 1972 in Volume 20, of Official Plats, at Pages 49-54, Merced County Records, said parcel of land being more particularly described as follows:

BEGINNING at the southwest corner of said Lot 35; thence N00°29'37"W, along the west line of said Lot 35, a distance of 291.40 feet; thence N89°30'23"E, a distance of 460.54 feet to the easterly line of said Lot 35 and to a point on a non-tangent curve concave to the northwest, having a radius of 265.00 feet, to said point a radial line bears N83°47'20"E; thence southwesterly along said curve and said easterly line thereof, through a central angle of 95°43'03", an arc distance of 442.70 feet to the point of tangency; thence S89°30'23"W, along the south line thereof, a distance of 196.86 feet to the POINT OF BEGINNING.

The above-described parcel of land contains 2.74 Acres, more or less, and is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.





**RECORDING REQUESTED BY:**

City of Merced  
City Clerk

**WHEN RECORDED MAIL TO:**

Dkota Investments, Inc.  
4848 Lemmon Drive, Suite 622  
Dallas, TX 75219

**MAIL TAX STATEMENTS TO:**

Dkota Investments, Inc.  
4848 Lemmon Drive, Suite 622  
Dallas, TX 75219

(Above for Recorder's Use Only)

**GRANT DEED**

**FOR A VALUABLE CONSIDERATION**, receipt and sufficiency of which is hereby acknowledged and agreed, the City of Merced (hereinafter referred to as the "Grantor") hereby grants to Dkota Investments, Inc., a Texas Corporation (hereinafter referred to as the "Grantee") the following property ("Subject Property") in the City of Merced, County of Merced, State of California and as legally described as follows:

**SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION**

**DEED RESTRICTIONS:**

The grant made herein is subject to and conditional upon the following deed restrictions:

**I. PURPOSE.**

A. The purpose of these restrictions is to insure proper development and use of the Subject Property; to protect the Grantee of the Subject Property and surrounding Owners against such improper development and use as will depreciate the value of the Subject Property; to prevent the erection on the Subject Property of structures built of improper design or materials; to encourage the erection of attractive improvements at appropriate locations; to prevent haphazard and inharmonious improvements; to secure and maintain proper setbacks from streets and provide adequately for a high type and quality of improvements of the Subject Property.

**II. DEFINITIONS**

For the purpose of this deed restriction, the following terms shall have the meaning set forth below:

- A. Improvements: “Improvements” shall mean and include buildings, outbuildings, parking areas, fences, walls, hedges, mass plantings, poles, signs, and any structures of any type or kind.
- B. Site: “Site” shall mean all contiguous land under one ownership.
- C. Site Plan Review Committee: “Site Plan Review Committee” shall mean the committee established by Chapter 20.68 of the Merced Municipal Code and referred to therein as the “Site Approval Committee.”
- D. Main Building Structure(s): “Main Building Structure(s)” shall mean the building structure as proposed in the Letter of Intent from Grantee to Grantor dated August 12, 2005, incorporated herein by reference.

### III. GENERAL RESTRICTIONS

Subject to modification for good cause by the Site Plan Review Committee, the following standards apply to all improvements on the Subject Property:

#### A. Space Occupancy.

1. General. No structure of any kind, and no part thereof shall be placed on any site closer to a property line than herein provided. The following structures and improvements are specifically excluded from these set back provisions:
  - (a) Roof overhang provided such overhang is approved by the Site Plan Review Committee.
  - (b) Steps and walks.
  - (c) Paving and associated curbing.
  - (d) Fences, except that no fence shall be places within the street setback area unless specific approval is given by the Site Plan Review Committee.
  - (e) Landscaping.
  - (f) Planters, not to exceed two (2) feet in height.
2. From Side and Rear Property Lines. The setback line is established as twenty (20) feet from the side or rear property line, except that the rear setback line may be modified or eliminated in any particular case by the Site Plan Review Committee provided Fire Zone II requirements are met.
3. From Street Property Lines. The setback line is established as fifty (50) feet from all street property lines.

**B. Building Height.**

1. No buildings, tower, mast, aerial, or similar structure shall exceed the height limitations set forth in the Federal Aviation Administration Technical Standard Order TSO-N18 and applicable City and County Ordinances, as amended from time to time.

**C. Partly Finished Construction.**

1. After commencement of construction of any structure, the Grantee shall diligently prosecute the work thereon, to the end that the structure shall not remain in a partly finished condition longer than reasonably necessary for completion thereof.

**D. Excavation.**

1. No excavation shall be made except in connection with construction of improvements, and upon completion thereof exposed opening shall be backfilled and disrupted ground shall be graded and leveled.

**E. Landscaping.**

1. Every site on which a building shall have been placed shall be landscaped according to plans approved as specified herein and maintained thereafter in a sightly and well-kept condition.
2. The Grantee, lessee, or occupant shall landscape and maintain unpaved areas between the street curb line and the property line adjoining any street.
3. Hose bibs and maintenance facilities shall be provided by the Grantee, lessee, or occupant in the vicinity of landscaped areas.

**F. Barriers.**

1. No fence, wall, hedge, mass planting, or other barrier shall be allowed to extend beyond the setback lines established herein except upon approval of plans and specifications as set forth herein.

**G. Signs. Unless otherwise provided herein, no sign shall be erected or maintained unless it complies with all of the following conditions:**

1. It is clearly incidental, customary to, and commonly associated with, the principal use of the Subject Property.
2. It is limited in subject matter to the name, design, picture or trademark of the Grantee, operator, builder, sales agent, lessor or lessee of the Subject Property or of the activities (including merchandise handled or services rendered) on the Subject Property.



3. It does not include any general commercial advertising unrelated to the principal use of the Subject Property. If the subject property is in single use, such permitted signs shall not exceed one square foot for each lineal foot of parcel footage, but in no case shall a sign area of 500 square feet be exceeded, and shall be limited to one sign per use except as set forth in this section.

If the Subject Property is a corner or through parcel, there may be erected one sign facing each frontage; however, each sign shall not exceed the maximum allowed sign area which is computed for the narrowest frontage.

Building mounted signs shall be mounted parallel to the wall upon which they are mounted, and shall not project beyond the side or upper edge of that wall. Free-standing signs shall be permitted only upon specific authorization of the Site Plan Review Committee.

For each entrance or exit servicing off-street parking or loading facilities, there may be one ten (10) square foot sign erected, clearly incidental to the parking or loading use. No sign shall be erected at the intersection of any street in such a manner as to create a traffic hazard by obstructing vision; or at any location where it may interfere with, obstruct the view of, or be confused with any authorized traffic sign. Moving signs and flashing lights are prohibited.

#### H. Off Street Parking.

1. There shall be provided, at the time any building or structure is erected, enlarged, or increased in capacity, off-street parking spaces for automobiles in accordance with the requirements set forth below:
  - (a) Size and Access. Each off-street parking space shall have a depth of not less than twenty (20) feet, and a width of not less than eight and one-half (8 ½) feet, exclusive of access drives or aisles. There shall be adequate provision for ingress and egress to all parking spaces.
  - (b) Parking Space Required. Industrial uses shall provide one parking space for each vehicle used in the conduct of the business and one for each two employees on the largest shift. Uses other than industrial shall provide parking as indicated in the appropriate off-street parking section of the City's Zoning Ordinance.

The number of parking spaces provided shall adequately meet the parking needs of the establishment for employees' parking and for the services of the public, such as customers, patrons, and clients. Any of the area set aside for off-street parking facilities that is not improved and used for parking may be temporarily used for other needs, in accordance with all of the regulations and controls set forth herein. However, no permanent structures shall be permitted on said area except for purposes of parking.

- (c) Surfacing and Lighting. All off-street parking spaces shall be surfaced with asphaltic or Portland cement binder pavement so as to provide a durable and dust-free surface; shall be so graded and drained as to dispose of all surface water

accumulated within the area; and shall be so marked as to provide for orderly and safe loading and unloading, parking, and storage of motor vehicles. Any lighting used to illuminate any off-street parking area shall be so arranged as to reflect the light away from the adjacent properties.

**I. Off-Street Loading.**

1. Truck loading shall be conducted off the street. No loading dock shall be constructed fronting on any public street or roadway except where such loading dock will permit tractor-trailers of the maximum allowable length in California to be carried completely off the street right-of-way. No loading dock shall be constructed in the front yard setbacks. No loading berth or entrance or exit thereto shall be located less than forty (40) feet from the intersection of any two street right-of-way lines. Off-street loading berths shall be provided according to the needs of the establishments. All curb cuts shall be a minimum of thirty (30) feet in width.

**J. Storage Areas.**

1. No materials, supplies, or equipment, excluding company-owned or operated trucks and motor vehicles, shall be stored in any area on a site except inside a closed building, or behind a visual barrier which shall be at least six (6) feet in height, where such material, supplies, or equipment may be viewed from the roadway.
2. Any storage areas screened by visual barriers shall be located on the rear portion of the site.
3. No storage area shall extend past street setback lines as established herein.

**IV. OPERATION AND USE STANDARDS**

**A. Permitted Operations and Uses.**

Unless otherwise specifically prohibited herein and except as otherwise prohibited by law, any industrial operation and use will be permitted if it is performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce any of the following effects discernible at any property line or affecting an adjacent property (except during periods when breakdown of equipment occurs in such a manner as to make it evident that the effect was not reasonably preventable):

1. Noise or sound that either (a) exceeds seventy (70) decibels for a period or periods aggregating more than three (3) minutes in any one (1) hour, or (b) is objectionable due to intermittence beat or frequency or shrillness.
2. Smoke of a shade as dark or darker than that designated as No. 2 on the Ringelmann Chart, as published by the United States Bureau of Mines, for a period or periods aggregating more than three (3) minutes in any one (1) hour.

3. Obnoxious odors.
4. Dust, dirt, or fly ash.
5. Noxious, toxic, or corrosive fumes or gases.
6. Unusual fire or explosive hazard.
7. Radioactivity or electrical disturbances adversely affecting the operation of any aircraft or aircraft instruments or electronic equipment; or dangerous to the health or safety of persons not involved in the industrial operation causing the radioactive or electrical emission or disturbance; or adversely affecting the operation of any equipment or apparatus other than that of the creator of such emission or disturbance.

**B. Prohibited Operations and Uses.**

The following operations and uses shall not be permitted unless such operations and uses qualify under the procedure set forth hereinafter under the heading "Procedure for Reclassification":

1. Residential.
2. Trailer camps.
3. Labor camps.
4. Junk yards.
5. Drilling for and/or removal of oil, gas, or other hydrocarbon.
6. Commercial excavation of building or construction materials.
7. Distillation of bones.
8. Dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse.
9. Fat rendering.
10. Stockyard or slaughter of animals.
11. Refining of petroleum or any of its products.
12. Smelting of iron, tin, zinc, or other ores.

**C. Liquid or Solid Wastes.**

1. No discharge into any public sewer, private sewage disposal system, or stream or into the ground shall be permitted except in accord with standards approved by the City of Merced or standards equivalent to those by the City of Merced for similar uses, of any materials of such nature or temperature as can contaminate any water supply, interface with bacterial processes in sewage treatment, or otherwise cause emission of dangerous or offensive elements.

**D. Procedure for Reclassification.**

1. Operation and uses which are otherwise prohibited by these restrictions may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by the Site Plan Review Committee. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other properties or upon the occupants thereof.

If the Site Plan Review Committee fails either to approve or disprove such operational plans and specifications within thirty (30) days after the same have been submitted to it, it shall be conclusively presumed that such operational plans and specifications have been disapproved.

Neither the Grantor, the Site Plan Review Committee, nor any of the respective successors or assigns, shall be liable in damages to anyone submitting operational plans and specifications to them for approval, or to any owner of land affected by this deed restriction, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such operational plans and specifications Grantee agrees, by acquiring title thereto, that he will not bring any action or suit against Grantor to recover any such damages.

**V. DRILLING OR USING WELLS**

No wells shall be drilled or existing wells used upon any portion of the Subject Property without prior written consent of the Grantor. The provisions of this paragraph shall not apply to a duly authorized public utility company or political subdivision producing water upon lands covered by these restrictions for distribution to all parcels covered thereby.

**VI. OPTION TO REPURCHASE**

Construction of the Main Building Structure(s) for commercial and/or industrial operation on the Subject Property shall be commenced by the Grantee within one (1) year after recording of this Deed. In addition to all other remedies contained herein, failure to so commence constructions of Main Building Structure(s) within the said one-year period shall give the Grantor the right and option to repurchase the Subject Property upon which the Main Building Structure(s) should have been erected. The option price shall be the final purchase price paid to the Grantor by the Grantee without interest, appreciation, or reimbursement for any improvements or City, County or other taxes levied or assessed against the Subject Property. Prior to completion of the Main Building Structure(s) for commercial and/or industrial operation on the Subject Property, Grantee shall not transfer title to the Subject Property to another person or entity without Grantor's prior written consent, which may be withheld at Grantor's sole and complete discretion.

DATED: \_\_\_\_\_

GRANTOR:  
THE CITY OF MERCED, A CALIFORNIA  
CHARTER MUNICIPAL CORPORATION

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

ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

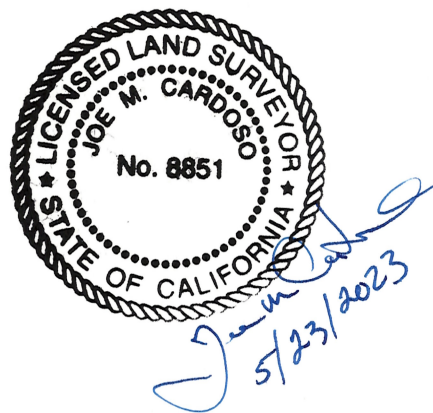
By: *K. Flores* *5/18/23*  
*Contract* City Attorney Date

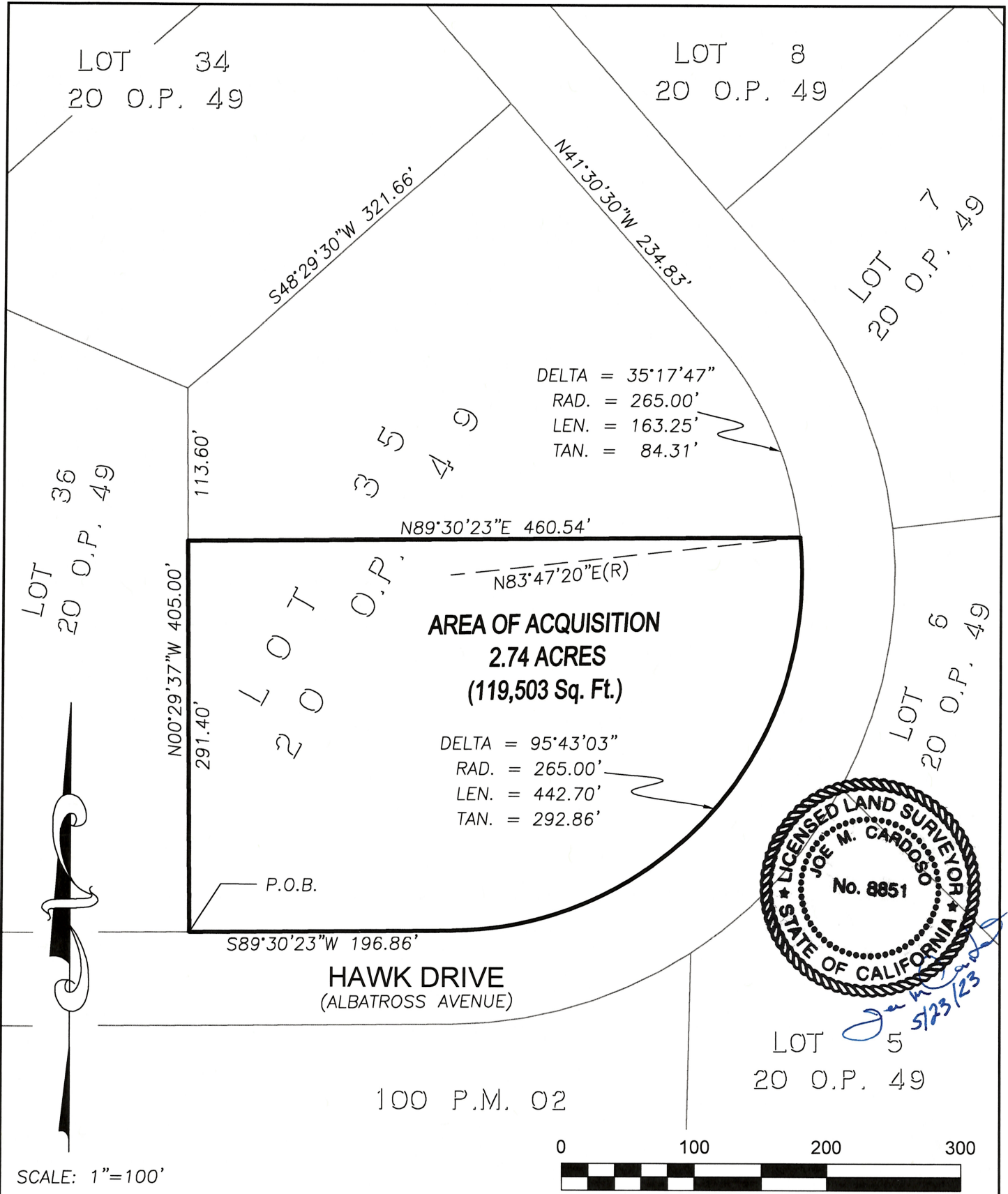
## **EXHIBIT A**

A parcel of land situated in the Northwest One Quarter (NW1/4) of Section 35, Township 7 South, Range 13 East, M.D.B. & M., City of Merced, County of Merced, State of California, said parcel of land being a portion of Lot 35, as said Lot 35 is delineated on that certain map entitled "MAP OF MERCED AIRPORT INDUSTRIAL PARK" recorded on October 16, 1972 in Volume 20, of Official Plats, at Pages 49-54, Merced County Records, said parcel of land being more particularly described as follows:

BEGINNING at the southwest corner of said Lot 35; thence  $N00^{\circ}29'37''W$ , along the west line of said Lot 35, a distance of 291.40 feet; thence  $N89^{\circ}30'23''E$ , a distance of 460.54 feet to the easterly line of said Lot 35 and to a point on a non-tangent curve concave to the northwest, having a radius of 265.00 feet, to said point a radial line bears  $N83^{\circ}47'20''E$ ; thence southwesterly along said curve and said easterly line thereof, through a central angle of  $95^{\circ}43'03''$ , an arc distance of 442.70 feet to the point of tangency; thence  $S89^{\circ}30'23''W$ , along the south line thereof, a distance of 196.86 feet to the POINT OF BEGINNING.

The above-described parcel of land contains 2.74 Acres, more or less, and is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.





# TACHMENT C

The site plan shows a property bounded by a curved line on the right and a straight line on the top and left. The property is divided into several sections:

- Top Section:** A large open area with a "PROPERTY LINE AND FENCE" indicated by a dashed line. Dimensions include 550'-0" and 19'-6" across the top, and 19'-0" and 85'-0" on the right side.
- Left Section:** A vertical strip with dimensions 10'-0", 100'-0", 100'-0", and 100'-0" along the left edge.
- Central Section:** Contains a "WAREHOUSE/OFFICE" building labeled "11,478 SF TOTAL". To its left is a "TRAIN ENCLOSURE" and a smaller building labeled "3 SPACES, 15' x 50'". To the right of the warehouse are two parking areas: "7 SPACES, 15' x 24'" and "10 SPACES, 8' x 22'".
- Bottom Section:** A curved area labeled "HAWK DRIVE" at the bottom. It includes a "CL. FENCE" and a "BURNING GATES" area. Dimensions include 100'-0" and 100'-0" along the bottom edge.

Other labels include "CL. FENCE", "BURNING GATES", and "CL. FENCE" near the bottom right. A north arrow and "SCALE 1" = 20'" are located in the bottom right corner.

## SITE PLAN

**MORGAN  
ARCHITECTS**  
2825 SAN JUAN CT.  
MERCED, CALIFORNIA 95340  
PHONE (209) 383-3060

DATE:

REVISIONS:

JOB NO:

SHEET NO:



ATTACHMENT D

# CITY OF MERCED ZONING ORDINANCE



Effective  
October 19,  
2016

## Chapter 20.12 - INDUSTRIAL ZONING DISTRICTS

### Sections:

**20.12.010 Purpose of the Industrial Zoning Districts**

**20.12.020 Land Use Regulations for Industrial Zoning Districts**

**20.12.030 Development Standards for Industrial Zoning Districts**

### 20.12.010 Purpose of the Industrial Zoning Districts

- A. Light Industrial (I-L).** The I-L zoning district provides areas for manufacturing, wholesale, and storage activities that meet City standards to ensure compatibility with surrounding areas and that maintain and strengthen the economic base of the City. I-L districts shall have a minimum size of 5 acres.
- B. Heavy Industrial (I-H).** The I-H zoning district provides areas for a full range of industrial land uses, including operations that necessitate the storage of hazardous or unsightly materials, and encourages sound industrial development by providing and protecting an environment exclusively to insure the protection of surrounding areas. I-H districts shall have a minimum size of 10 acres.

### 20.12.020 Land Use Regulations for Industrial Zoning Districts

- A. Permitted Uses.** Table 20.12-1 identifies land uses permitted in industrial zoning districts.

**TABLE 20.12-1 PERMITTED LAND USES IN THE INDUSTRIAL ZONING DISTRICTS**

Key		Zoning District <sup>[1]</sup>		Additional Regulations
P Permitted Use	I-L	I-H		
M Minor Use Permit Required				
SP Site Plan Review Permit Required				
C Conditional Use Permit Required				
X Use Not Allowed				
RESIDENTIAL USES				
Caretaker’s Home	SP	X		
COMMUNITY USES				
Colleges and Trade Schools	C	X		
Instructional Services	C [2]	X		
Public Safety Facilities	SP	C		

Key		Zoning District <sup>[1]</sup>		Additional Regulations
<b>P</b> Permitted Use	<b>I-L</b>	<b>I-H</b>		
<b>M</b> Minor Use Permit Required				
<b>SP</b> Site Plan Review Permit Required				
<b>C</b> Conditional Use Permit Required				
<b>X</b> Use Not Allowed				
COMMERCIAL USES				
Adult Entertainment Businesses	<b>SP</b>	<b>SP</b>	Chapters 5.58 and 20.60	
Building Supplies/Home Improvement Stores	<b>SP</b>	<b>X</b>		
Business Support Services	<b>SP</b>	<b>X</b>		
Commercial Cannabis Businesses	Refer to Table 20.44-1 in Section 20.44.170			
Equipment Sales and Rental	<b>SP</b>	<b>X</b>		
Gas and Service Stations/Car Washes	<b>SP [5]</b>	<b>SP [5]</b>	Section 20.44.070	
Horticultural Nurseries, Retail	<b>C</b>	<b>X</b>		
Horticultural Nurseries, Wholesale	<b>SP</b>	<b>X</b>		
Mobile Food Vendors	<b>C</b>	<b>C</b>	Chapter 5.54 & 20.44.020	
Restaurants	<b>C [4]</b>	<b>C [4]</b>		
Retail (Products Manufactured On-site Only )	<b>SP [3]</b>	<b>SP [3]</b>		
Vehicle Repair and Maintenance	<b>SP [5]</b>	<b>SP [5]</b>		
INDUSTRIAL USES				
Construction and Material Yards	<b>SP</b>	<b>SP</b>		
Manufacturing and Processing, Light	<b>SP</b>	<b>SP</b>		
Manufacturing and Processing, General	<b>SP</b>	<b>SP</b>		
Manufacturing and Processing, Heavy	<b>X</b>	<b>SP [6]</b>	Section 20.12.020.B	
Research and Development	<b>SP</b>	<b>SP</b>		
Wrecking and Salvage Establishments	<b>X</b>	<b>C</b>	Section 20.44.140	
TRANSPORTATION, COMMUNICATION, AND UTILITY USES				
Freight Terminals	<b>X</b>	<b>SP</b>		
Public/Mini Storage	<b>SP</b>	<b>X</b>		
Recycling Collection Facilities, Small	<b>SP</b>	<b>X</b>	Section 20.44.090	
Recycling Collection Facilities, Large	<b>SP</b>	<b>SP</b>	Section 20.44.090	
Recycling Processing Facilities	<b>SP</b>	<b>SP</b>	Section 20.44.090	
Utilities, Major	<b>C</b>	<b>SP</b>		
Utilities, Minor	<b>SP</b>	<b>SP</b>		
Warehousing, Wholesaling and Distribution	<b>SP</b>	<b>SP</b>		
Wireless Communications Facilities	See Chapter 20.58			

**Notes:**

- [1] A Site Plan Review Permit may be required per Chapter 20.32 (Interface Regulations) regardless of the uses shown in Table 20.12-1.
- [2] Limited to fitness, gymnastics, and other similar recreational sports and health facilities.
- [3] Permitted only as an ancillary showroom use for goods manufactured onsite, not to occupy more than 10 percent of the total building floor area unless a Site Plan Review Permit is obtained for additional floor area.
- [4] May be permitted only as an ancillary use to serve employees, not to occupy more than 2,500 square feet with no outside advertising, unless a Conditional Use Permit is obtained.
- [5] Limited to fleet operations only.
- [6] All manufacturing of materials listed in the Section 20.12.020.B is prohibited unless the Planning Commission determines otherwise through a Conditional Use Permit.

**B. Prohibited Uses.** The manufacturing of the following materials are prohibited unless the Planning Commission determines otherwise through a Conditional Use Permit process.

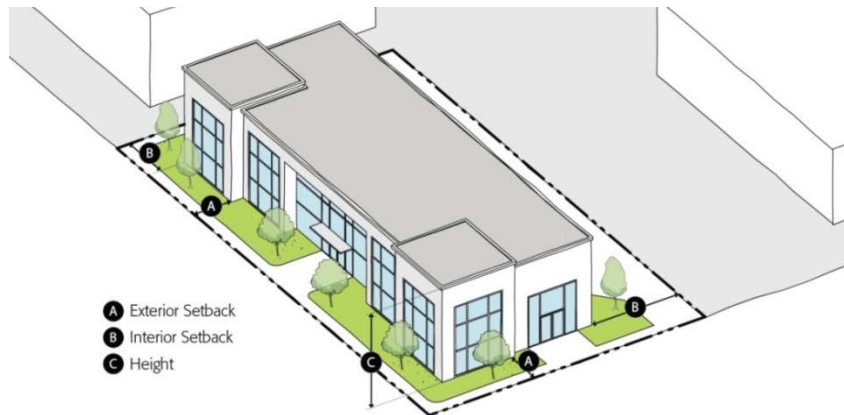


1. Asphalt, cement, charcoal, and fuel briquettes.
2. Aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates of an explosive nature, potash, pyroxylin, rayon yarn, and hydrochloric, nitric phosphoric, picric, and sulphuric acids.
3. Coal, coke, and tar products, including use in other manufacturing; explosives, fertilizers, gelatin, animal glue, and size.
4. Turpentine, matches, and other than water-based paint.
5. Rubber and soaps, including fat rendering.
6. Flour mill.
7. Processing of nitrating of cotton or other materials; magnesium foundry; reduction, refining, smelting and alloying of metal or metal ores; refining petroleum products, such as gasoline, kerosene, naphtha, lubricating oil, distillation of wood or bones; storage, curing or tanning of raw, green or salted hides or skins.
8. Stockyards or slaughterhouses, except for poultry, animal feed or sales yard, fertilizer yard; slag piles.
9. Storage of fireworks or explosives, except where incidental to a permitted use.
10. Any other use which is determined by the Planning Commission to be of the same general character as the above uses.

### 20.12.030 Development Standards for Industrial Zoning Districts

- A. General Standards.** Table 20.12-2 identifies development standards that apply to all parcels and structures located in industrial and manufacturing zoning districts. See Figure 20.12-1.

**FIGURE 20.12-1 INDUSTRIAL DEVELOPMENT STANDARDS**



**TABLE 20.12-2 DEVELOPMENT STANDARDS FOR INDUSTRIAL ZONING DISTRICTS**

	Figure Label	Standard by Zone	
		I-L	I-H
Parcel Area (min.)		20,000	1 Acre
Yards (min.)			
Exterior	<b>A</b>	15 ft. [1]	15 ft. [1]
Interior	<b>B</b>	20 ft. [2]	None
Height (max.) [3]	<b>C</b>	None, except for adjacent to residential zones or within Airport Compatibility Plan area	None, except for adjacent to residential zones or within Airport Compatibility Plan area

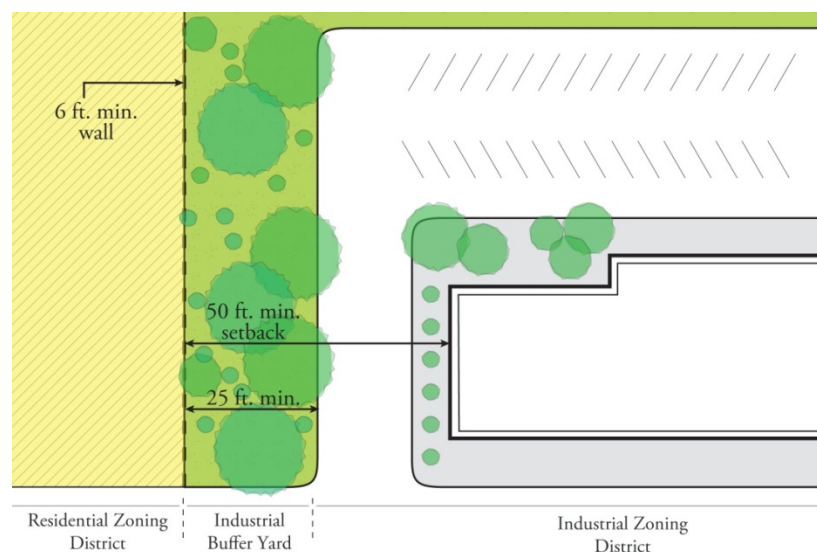
**Notes:**

- [1] When a parcel is located on a block with 40 percent of the parcels occupied by structures with exterior yards of less than 15 feet, the minimum setback shall be equal to the average exterior setback of structures on the block.
- [2] Interior yards less than 20 feet are permitted for building in compliance with the Fire Code with approval of a Site Plan Review Permit.
- [3] The maximum height of industrial structures when directly adjacent to residential zones will be established with the Site Plan Review Permit/Interface process, based on impacts to the adjacent residential uses. Industrial structures shall also comply with the Merced County Airport Land Use Compatibility Plan.

## B. Industrial Buffer Yards

1. **Industrial Buffer Yard Defined.** An industrial buffer yard is an area of plantings and walls that shields neighboring residential properties from negative impacts created by industrial land uses.
  - a. **When Required.** An industrial buffer yard is required for any development within an industrial zone that is adjacent to a residential zone.
  - b. **Buffer Yard Standards.**
    - (1) Industrial buffer yards shall be located along the outer perimeter of a property line abutting a residential zone. See Figure 20.12-2.
    - (2) Residential side of the wall shall be landscaped and maintained by the property owner of the industrial use.
    - (3) The minimum width of an industrial buffer yard shall be 25 feet.
    - (4) Industrial buffer yards shall include a solid masonry or equivalent wall no less than 6 feet in height.
    - (5) Industrial buffer yards shall be planted with a mix of drought-tolerant, deciduous and evergreen trees and shrubs of suitable type, size, and spacing to achieve screening year-round.
    - (6) All plantings within an industrial buffer yard shall be maintained in a manner consistent with landscaping maintenance standards in Chapter 20.36 (Landscaping).
    - (7) Paved surfaces, except sidewalks, shall be prohibited within industrial buffer yards. Buffer yards shall not be used for parking, driveways, trash enclosures, building areas, or any other activity associated with the primary use on the property.

FIGURE 20.12-2 INDUSTRIAL BUFFER YARDS





**C. Performance Standards.** All land uses and structures in the industrial zones shall comply with the following performance standards. Applicants are responsible for providing compliance evidence for all applicable performance standards.

**1. Noise.**

- a. **Maximum Exposure.** No operation or activity shall transmit any noise exceeding 70 dBA between 7:00 a.m. and 9:00 p.m. and 60 dBA between 9:00 p.m. and 7:00 a.m. beyond the property line. Any uses abutting residential zoning shall not transmit any noise between 10:00 p.m. and 7:00 a.m. beyond the property line. If any operation or activity proposed exceeds the maximum decibel level stated in this section, the applicant must submit a plan to mitigate noise in order to obtain building permits.
- b. **Exceptions.** Upon written application from the owner or operator of an industrial or commercial noise source, the review authority, as part of a permit approval, may conditionally authorize exceptions to local noise emission standards, including the times of day described in “a” above, based upon analysis supported by the Department of Development Services, in the following situations:
- (1) Infrequent noise;
  - (2) Noise levels at or anywhere beyond the property lines of the property of origin when exceeded by an exempt noise in the same location; and
  - (3) If, after applying best available control technology, a use existing prior to the effective date of this Zoning Ordinance is unable to conform to the standards established by this section.



2. **Vibration.** No ground vibration, excluding vibration generated from motor vehicles, which is discernible by human senses for more than 3 minutes or more duration in any 1 hour, is permitted beyond the property line.

3. **Odor.** No objectionable odor or noxious gas emission which is discernible at any point beyond the property line is permitted.
4. **Air Quality.** All uses shall comply with applicable local, State, and federal laws and regulations regarding contaminants and pollutants. This requirement includes, but is not limited to, emissions of suspended particles, carbon monoxide, hydrocarbons, odors, toxic or obnoxious gases and fumes.
5. **Heat.** No use shall generate heat so that increased ambient air temperature or radiant heat is measurable at any exterior lot line.
6. **Radioactivity.** No radiation of any kind shall be emitted in quantities which are dangerous to humans.



7. **Industrial Waste.**

- a. All uses are prohibited from discharging liquid, solid, toxic, or hazardous wastes onto or into the ground and into streams, lakes, or rivers. Discharge into a public or private waste disposal system in compliance with applicable local, State, and federal laws and regulations is permitted.
- b. Wastes detrimental to a public sewer system or a sewage treatment plant shall not be discharged to a public sewer system unless they have been pretreated to the degree required by the authority having jurisdiction over the sewerage system.
- c. The handling and storage of hazardous materials, the discharge of hazardous materials into the air and water, and the disposal of hazardous waste in connection with all uses shall be in conformance with all applicable local, State, and federal regulations.
- d. All burning of waste materials accessory to any use shall comply with the San Joaquin Valley Air Pollution Control District rules and regulations.
- e. The disposal or dumping of solid wastes accessory to any use, including, but not limited to, slag, paper, and fiber wastes or other industrial wastes, shall be in compliance with applicable local, State, and federal laws and regulations.







**8. Exterior Lighting.** Direct light shall not extend beyond a property line into a lot occupied by a single-family home. Lighting shall not create a source of glare visible from a neighboring single-family home. The minimum illumination level for area intended shall be 1 foot candle.

**9. Electromagnetic Interference.** Devices which generate electromagnetic interference shall not cause interference with any activity outside the property upon which the device is located. Public utilities shall comply with all applicable State and federal regulations.

**10. Fire and Explosive Hazards.**

All uses involving the use or storage of combustible, explosive, caustic, or otherwise hazardous materials shall comply with

all applicable local, State, and federal safety standards and shall be provided with adequate safety devices against the hazard of fire and explosion, and adequate fire-fighting and fire suppression equipment in accordance with the requirements of the Fire Marshal.

