

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

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

(Above for Recorder's Use Only)

DEVELOPER AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2018 by and between the City of Merced, a California Charter Law Municipal Corporation ("City") and Merced Gateway, LLC, a California Limited Liability Company ("Owner").

W I T N E S S E T H

WHEREAS, Owner has applied to the City for a zone change for two parcels totaling approximately 71.135 acres located approximately 1,300 feet east of Coffee Drive along the north and south sides of Campus Parkway to approximately 264 feet west of the intersection of Gerard Avenue and Campus Parkway, between Gerard Avenue and Mission Drive, and as legally described on Exhibit "A," and shown on the Map at Exhibit "B," attached hereto and incorporated herein by this reference; and,

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

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

1. Owner, for himself and all successors thereto, agrees to pay all City and school district fees, taxes, and/or assessments in effect on the date of subdivision and/or permit approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time water/sewer connection and/or building or encroachment permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc., (and to comply with the additional conditions set forth in Exhibit "C," (Planning Commission Resolution #3093), attached hereto and incorporated herein by this reference); provided that any of the foregoing may be modified by a subsequent written agreement between Owner and the City. Payment shall be made at the

time of building permit issuance unless an Ordinance or other requirement of, or written agreement with, the City, mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

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

3. Owner agrees to pay all sewer connection costs imposed by the City as delineated in Section 15.16.070 of the Merced Municipal Code and to pay all other costs required by Chapter 15.16 of the Merced Municipal Code, except as subsequently agreed (if at all) in a written agreement with the City.

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

5. City, on its part, agrees to rezone the subject property to Conditional Business Park (B-P) and change the General Plan (City approval) in accordance with Exhibit "B."

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

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

a final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit "A."

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

9. Owner agrees to comply with and abide by all conditions set forth by the City relating to the development of the property subject to this Agreement, including installation of all required public improvements.

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

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

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

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

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

15. Nothing herein shall limit the City's right or ability to enter into a separate development agreement with Owner.

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


CITY OF MERCED
A California Charter Law Municipal Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  5-25-2018
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
MERCED GATEWAY LLC,
A California Limited Liability Company

BY: _____
Timothy Jones, Manager

ADDRESS: 265 East River Park Circle
Suite 310
Fresno, CA 93720

TELEPHONE: (559-237-7000

FAX: _____

E-MAIL: tjones@vdc LLC.com

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel A:

Lot 171 of "Merced Colony" as per map filed February 3, 1910 in Volume 4 of Maps, Page 24, Merced County Records.

EXCEPTING THEREFROM the property rights reserved in deed recorded June 30, 1938 in Volume 578 of Official Records, Page 211 and in deed recorded June 4, 1954 in Volume 1158 of Official Records, Page 520, Merced County Records, and by document recorded July 20, 1985 in Volume 2489, Page 709, Merced County Records.

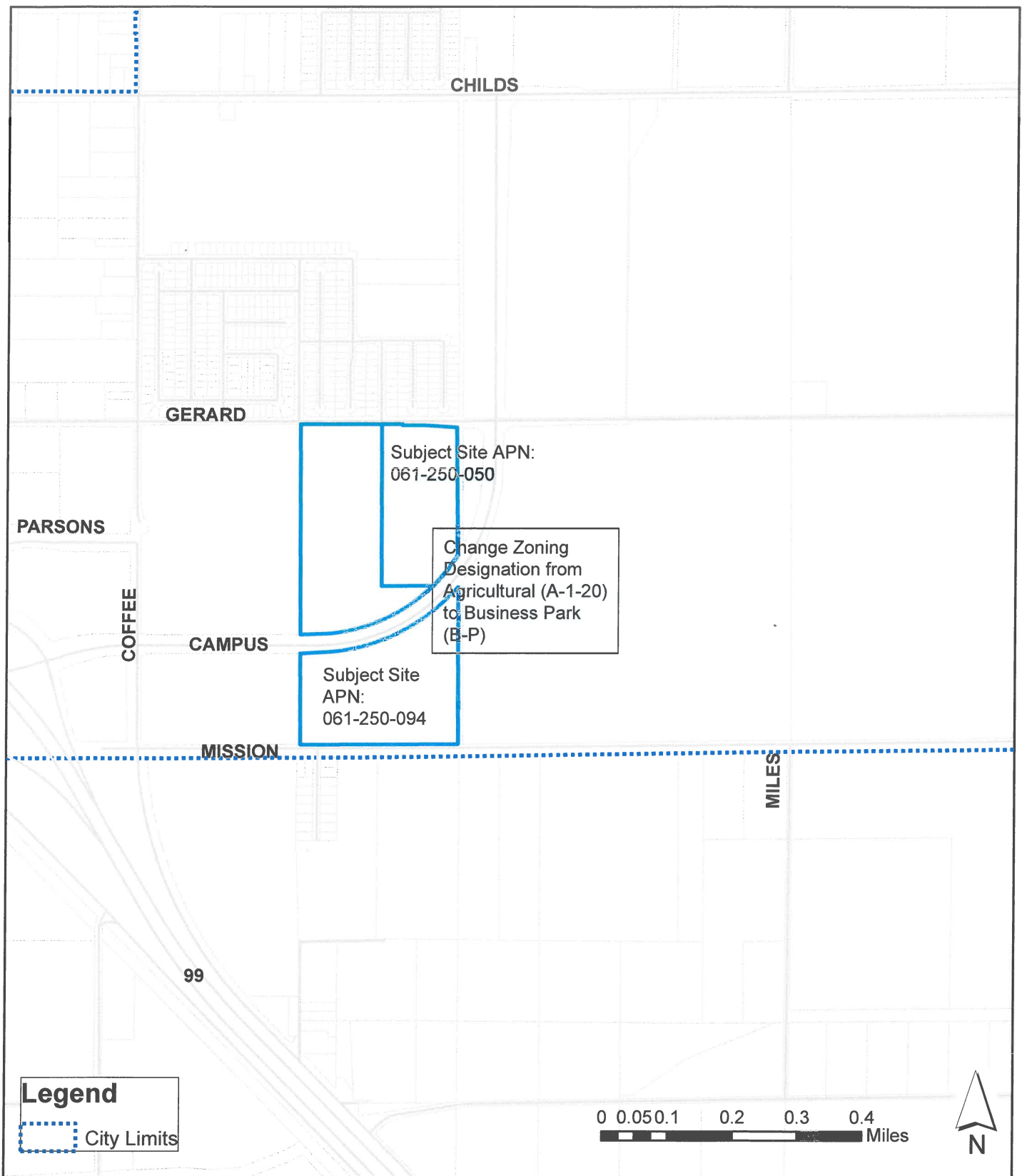
ALSO EXCEPTING THEREFROM that portion thereof granted to County of Merced, a body politic and corporate, in Grant Deed recorded July 30, 2008 as Document No. 2008-040849, Official Records of Merced County.

Parcel B:

Lots 231 and 232 of "Merced Colony" as per map filed February 3, 1910 in Volume 4 of Maps, Page 24, Merced County Records.

EXCEPTING THEREFROM the property rights reserved in deed recorded June 4, 1954 in Volume 1158 of Official Records, Page 520, Merced County Records.

ALSO EXCEPTING THEREFROM that portion thereof granted to County of Merced, a body politic and corporate, in Grant Deed recorded July 30, 2008 as Document No. 2008-040850, Official Records of Merced County.



Disclaimer: This document was prepared for general inquiries only. The City of Merced makes no warranty, representation, or guarantee regarding the accuracy of this map. The City of Merced is not responsible for errors or omissions that might occur. Official information regarding specific parcels should be obtained from official recorded or adopted City documents.

Zone Change #425 and Environmental Review #18-11

EXHIBIT B



**Conditions of Approval
Planning Commission Resolution #3093
Zone Change #425, and
Environmental Review #18-11**

- *1) The Zoning Designation shall be changed from Agricultural (A-1-20) to Business Park (B-P) for the property shown in Attachment A of Planning Commission Staff Report #18-07.
- *2) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- *3) The Project shall comply with the applicable mitigation measures set forth in Expanded Initial Study #97-22 for the Lyons Annexation to the City of Merced (Exhibit F of Planning Commission Staff Report #18-07).
- *4) All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- *5) Approval of the Zone Change is subject to the applicant's entering into a written Legislative Action Agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
- *6) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against 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

Conditions of Approval
Zone Change #425 and Environmental Review #18-11

thereof, or any of its officers, officials, employees, or agents.

- *7) 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.
- *8) Community Facilities District (CFD) formation is required for annual operating costs for storm drainage, public landscaping within State Highway rights-of-way, street trees, and street lights. CFD procedures shall be initiated before any final permit 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.
- *9) All development on the site would be subject to the Interface Regulations of Chapter 20.32 of the City's Zoning Ordinance. Therefore, all permitted uses on lots of the site that are across Gerard Avenue from homes in the R-1-5 Zone would be subject to Site Plan Review.
- *10) Access to Campus Parkway will be limited solely to Pluim Drive; no other curb cuts to Campus Parkway shall be permitted.

(*) Denotes non-discretionary conditions.

CITY OF MERCED
Planning Commission

Resolution #3093

WHEREAS, the Merced City Planning Commission at its regular meeting of Wednesday, May 9, 2018, held a public hearing and considered **Zone Change #425**, and Environmental Review #18-11, initiated by Merced Gateway LLC. This application involves amending the Zoning of two parcels from Agricultural (A-1-20) to Business Park (B-P), consistent with the parcels' existing General Plan designations. The parcels total 71.135 acres and are located approximately 1,300 feet east of Coffee Drive along the north and south sides of Campus Parkway to approximately 264 feet west of the intersection of Gerard Avenue and Campus Parkway, between Gerard Avenue and Mission Drive.; also known as Assessor's Parcel Numbers 061-250-094 and 061-250-050; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through I of Staff Report #18-07 2nd Addendum; and,

NOW THEREFORE, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council to find that the previous environmental review (Merced Vision 2030 General Plan EIR, SCH# 2008071069) remains sufficient and no further documentation is required (CEQA Section 15162), and recommend approval of Zone Change #425 and Environmental Review #18-11, subject to the conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner CAMPER, seconded by Commissioner MARTINEZ and carried by the following vote:

AYES: Commissioners Camper, Martinez, Padilla, and Chairperson Dylina
NOES: None
ABSENT: Commissioners Alshami and Colby
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 3093

Page 2

May 9, 2018

Adopted this 9th day of May, 2018



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:


Secretary

Attachment:

Exhibit A – Conditions of Approval

Conditions of Approval
Planning Commission Resolution # 3093
Zone Change #425

1. The Zoning Designation shall be changed from Agricultural (A-1-20) to Business Park (B-P) for the property shown in Attachment A of Staff Report #18-07 2nd Addendum.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. The Project shall comply with the applicable mitigation measures set forth in Expanded Initial Study #97-22 for the Lyons Annexation to the City of Merced, Attachment E of Planning Commission Staff Report #18-07 (Item M-5 is for improvements not located on the site of the Project and is not applicable).
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. Approval of the Zone Change is subject to the applicant's entering into a written Legislative Action Agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
6. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #3093

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 (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against 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.

7. 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.
8. Community Facilities District (CFD) formation is required for annual operating costs for storm drainage, public landscaping within State Highway rights-of-way, street trees, and street lights. CFD procedures shall be initiated before any final permit 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.
9. All development on the site would be subject to the Interface Regulations of Chapter 20.32 of the City's Zoning Ordinance. Therefore, all permitted uses on lots of the site that are across Gerard Avenue from homes in the R-1-5 Zone would be subject to Site Plan Review.
10. Access to Campus Parkway will be limited solely to Plum Drive; no other curb cuts to Campus Parkway shall be permitted.

n:shared:planning:PC Resolutions:ZC#425 Exhibit A

EXHIBIT A
OF PLANNING COMMISSION RESOLUTION #3093

Planning Commission Minutes Excerpt
APRIL 18, 2018

- 4.3 Zone Change #425, initiated by Merced Gateway LLC. This application involves amending the Zoning of two parcels from Agricultural (A-1-20) to Business Park (B-P), consistent with the parcels' existing General Plan designations. The parcels total 71.135 acres and are located approximately 1,300 feet east of Coffee Drive along the north and south sides of Campus Parkway to approximately 264 feet west of the intersection of Gerard Avenue and Campus Parkway, between Gerard Avenue and Mission Drive. (Item continued from meeting of April 4, 2018).

[Secretary's note: Due to the recusal of Planning Commissioner ALSHAMI, who lives close to the project site, this resulted in the lack of a quorum. This item was automatically continued and will be heard at the Planning Commission Meeting of May 9, 2018.]

Planning Commission Minutes Excerpt
APRIL 4, 2018

- 4.1 Zone Change #425, initiated by Merced Gateway LLC. This application involves amending the Zoning of two parcels from Agricultural (A-1-20) to Business Park (B-P), consistent with the parcels' existing General Plan designations. The parcels total 71.135 acres and are located approximately 1,300 feet east of Coffee Drive along the north and south sides of Campus Parkway to approximately 264 feet west of the intersection of Gerard Avenue and Campus Parkway, between Gerard Avenue and Mission Drive.

Principal Planner HREN reviewed the report on this item. For further information, refer to Staff Report #18-07.

[Secretary's note: Due to the recusal of Planning Commissioner ALSHAMI, who lives close to the project site, this resulted in the lack of a quorum. This item was automatically continued and will be heard at the Planning Commission Meeting of April 18, 2018.]

ACKNOWLEDGMENT

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

State of California

County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

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

State of California

County of _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)