

**RECORDING REQUESTED BY:**

City of Merced, A California charter  
municipal corporation

**WHEN RECORDED MAIL TO:**

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

(Above for Recorder's Use Only)

**1<sup>ST</sup> AMENDED AND RESTATED LEGISLATIVE ACTION AGREEMENT**

THIS 1<sup>ST</sup> AMENDED AND RESTATED LEGISLATIVE ACTION AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2020 by and between the City of Merced, a California Charter Law Municipal Corporation ("City") and Yosemite and G, 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 General Plan Amendment and Site Utilization Plan Revision for two (2) parcels containing approximately 21.5 acres located at the northeast corner of Yosemite Avenue and G Street, 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, On January 21, 2020, the City approved General Plan Amendment #19-03, Master Site Plan – Scheme 1.11, Site Utilization Plan Revision #3 to Planned Development #72 and a Legislative Action Agreement dated January 21, 2020 ("Legislative Action Agreement"); and

WHEREAS, Owner applied for Vesting Tentative Subdivision Map #1314 at Exhibit "D", attached hereto and incorporated herein by this reference; and

WHEREAS, Owner has also requested clarification that the Legislative Action Agreement supersedes a prior Development Agreement and deferment; and

WHEREAS, On September 9, 2020, the Planning Commission approved Vesting Tentative Subdivision Map #1314, contingent on the City Council's approval of the Amendments to the Legislative Action; and

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

WHEREAS, City and Owner desire to enter into this 1<sup>st</sup> Amended and Restated Legislative Action Agreement.

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 #3027), attached hereto and incorporated herein by this reference). Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

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

3. Owner agrees to pay all sewer connection costs imposed by the City as delineated in Section 15.16.070 of the Merced Municipal Code and to pay all other costs required by Chapter 15.16 of the Merced Municipal Code, 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 change the General Plan designation of the subject property to Neighborhood Commercial (CN) and change the Site Utilization Plan (City approval) in accordance with Exhibit "B." In addition, City, on its part, agrees to approve the Vesting Tentative Subdivision Map #1314 subject to all the conditions of approval, attached as Exhibit "D" and subject to the approval of this 1<sup>st</sup> Amended and Restated Legislative Action Agreement.

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

7. It is expressly agreed that this Agreement is not intended to limit the power of the City to impose other requirements, limitations, or fees, etc., as a condition of development, and does not relieve the Owner from complying with all other requirements that may be imposed as a condition of development, whether now in existence or hereinafter imposed by the City whether by zone change, subdivision map approval, ordinance, resolution, use permit, or otherwise. The parties agree that this Paragraph does not apply to the approval of 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 and the Master Sign Program approved as part of Conditional Use Permit #1241, approved by the City of Merced Planning Commission on May 20, 2020.

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. The following instruments are expressly superseded: (i) Development Agreement by and between the City of Merced and Della

Wathen, individually, and Della Wathen as Trustee of the Spalding G. Wathen Q-Tip Trust dated August 2, 2010 and recorded August 10, 2020 as Instrument No. 2010-030606, Official Records, a copy of which is attached hereto as Exhibit "D"; (2) Development Agreement by and between the City of Merced and the Prior Developer signed January 17, 2012 and recorded January 25, 2012 as Instrument No. 2012-002753, Official Records, a copy of which is attached hereto as Exhibit "E"; (3) Agreement (Deferment of Construction) by and between City of Merced and Spalding G. Wathen and Della Wathen dated November 30, 1989, recorded December 1, 1989, as Instrument No. 31271 in Book 2788, Page 553 of Official Records, as modified by Partial Termination of Agreement, recorded April 22, 2010 as Instrument No. 2010-015023 in Official Records, and Partial Termination of Agreement, recorded August 28, 2017 as Instrument No. 2017027795, Official Records, a copy of which is attached hereto as Exhibit "F"; and (4) Legislative Action Agreement dated January 21, 2020.

15. This Agreement may be executed in counterparts which, when taken together, constitute one (1) original.

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: \_\_\_\_\_  
Interim City Manager

ATTEST:  
STEPHANIE R. DIETZ, INTERIM CITY CLERK

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

APPROVED AS TO FORM:

BY:  \_\_\_\_\_  
City Attorney Date 10/8/2020

ACCOUNT DATA:

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



Verified by Finance Officer

OWNER  
YOSEMITE AND G LLC,  
A California Limited Liability Company

BY: Neil Angelillo  
Signature

NEIL ANGELLELL  
Print Name

Its: MANABCA

ADDRESS: 1155 W. Shaw Ave, Ste 104  
Fresno, CA 93711  
~~575 E. Locust Ave., Suite 201~~  
~~Fresno, CA 93720-2928~~

TELEPHONE: 559-222-5768x 102

FAX: 559-222-5755

E-MAIL: neil@truenorthprops.com

Yosemite and "G" Street  
1st Amended and Restated Legislative Action Agreement

**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 Fresno

On October 13, 2020 before me, Lisa F. Peine, Notary Public  
(insert name and title of the officer)

personally appeared Neil Angelillo,  
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

Lisa F Peine

(Seal)

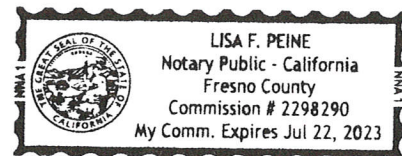
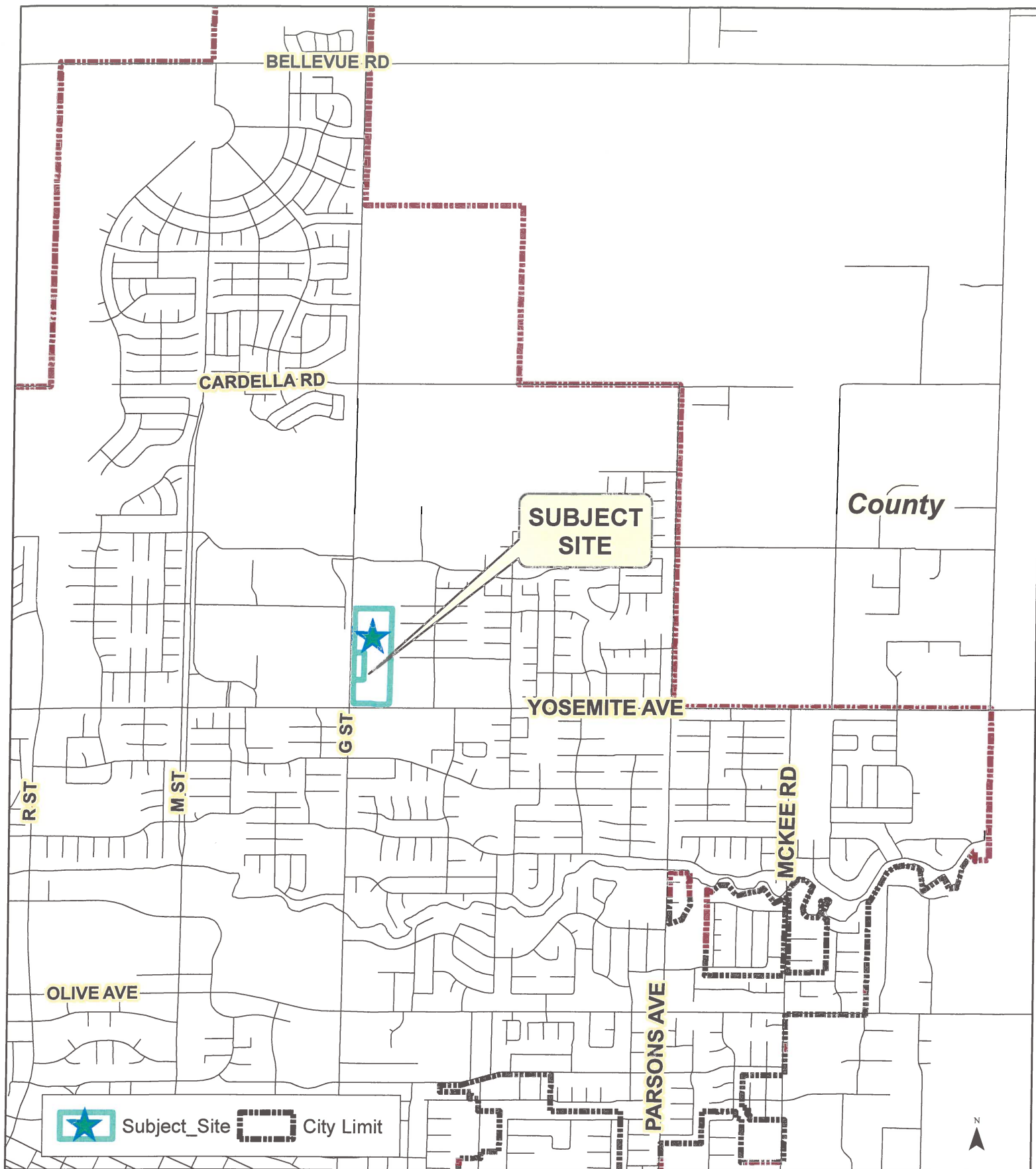


EXHIBIT "A"  
LEGAL DESCRIPTION

"Remainder C" of Final Map No. 5233, amended map for Mansionette Estates Unit 1, according to the map filed July 13, 2000 in Book 52, Pages 31, 32 and 33 of Official Plats, Merced County Records.

Assessor's Parcel Numbers (APN) 231-040-004, and 231-040-005.



Disclaimer: This document was prepared for general inquiries only. The City of Merced is not liable for errors or omissions that might occur. Official information concerning specific parcels should be obtained from recorded or adopted City documents.

## LOCATION MAP

### EXHIBIT "B"



**CITY OF MERCED**  
**Planning Commission**

**Resolution #3027**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of December 4, 2013, held a public hearing and considered **General Plan Amendment #13-05 and Zone Change #419**, initiated by Peter Lau, applicant for Aloes and Cedars, LLC, property owner. This application involves a request to amend the General Plan Designation from Low-Density Residential (LD) to Commercial Office (CO) and change the zoning from Residential Planned Development (R-PD) #28 to Conditional Commercial Office (C-O) for an approximately 2.6-acre parcel, generally located at the northwest corner of M Street and Yosemite Avenue.; also known as Assessor's Parcel No. 230-220-055; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through I of Staff Report #13-18; and,

**NOW THEREFORE**, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Negative Declaration regarding Environmental Review #13-28, and approval of General Plan Amendment #13-05 and Zone Change #419, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Williams, seconded by Commissioner Mackin, and carried by the following vote:

AYES: Commissioners Williams, Mackin, Smith, Smoot, McCoy, and Padilla  
NOES: Chairperson Colby  
ABSENT: None  
ABSTAIN: None

PLANNING COMMISSION RESOLUTION #3027

Page 2

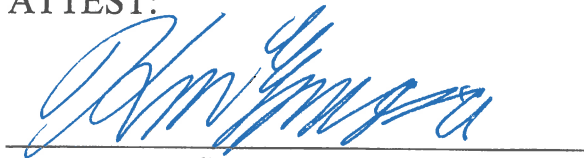
December 4, 2013

Adopted this 4th day of December 2013



Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

**Conditions of Approval**  
**Planning Commission Resolution #3027**  
**General Plan Amendment #13-05/Zone Change #419**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and - Attachment B of Staff Report #13-18, except as modified by the conditions.
2. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
3. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
4. Approval of the General Plan Amendment and Zone Change are subject to the applicant(s) entering into a written (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 public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall

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

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
7. The approval of this General Plan Amendment and Zone Change allows all principally permitted and accessory uses within a Commercial Office (C-O) zone (MMC 20.20). Accessory uses include incidental services, such as restaurants, pharmacies, and retail sales to serve occupants and patrons of the principally permitted uses, when conducted and entered from within the building group, provided there is no exterior display or advertising.
8. Conditional uses listed in Merced Municipal Code Section 20.20.040 are allowed with the approval of a Conditional Use Permit with the exception of mortuaries, crematories, bail bonds businesses, R-4 residential uses, and public utility uses, substation, and communication equipment buildings. which are precluded by the Conditional Zoning as proposed and agreed to by the applicant and as spelled out in the Developer Agreement per Condition #4 .
9. Due to the City's interface regulations (MMC Section 20.52), a conditional use permit shall be required prior to the construction of all buildings.



10. All signs shall comply with the North Merced Sign Ordinance and Section 20.20 (Commercial Office Zone) of the City's Zoning Ordinance.
11. All driveways and sidewalks along the property frontage shall comply with requirements of the American with Disabilities Act (ADA).
12. Any missing or damaged improvements along the property frontage shall be installed/repaired.
13. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
14. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list). Trees shall be installed at a ratio of at least one tree for each six parking spaces.
15. The applicant shall work with the City Engineering Department to determine the acceptable method of storm drainage from the site. An on-site retention area may be required.
16. If the property is split into multiple parcels, the owner shall be required to record joint access and parking easements allowing free vehicular access and parking between parcels. Such easements shall be recorded as part of any parcel map or conditional use permit approval.
17. Only non-illuminated signs shall be allowed along the northern and western elevations of the buildings.
18. Any retail uses allowed as an accessory use or otherwise shall be limited in hours to be open no later than 10:00 p.m.
19. The building design shall be approved at the Conditional Use Permit stage. At that time, full elevations, materials, and details on any other design elements shall be provided.
20. All artificial lighting on the site, including parking lot and building lighting, shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent properties.

EXHIBIT "D"

**RECORDING REQUESTED BY:**

City of Merced, A California charter  
municipal corporation

**WHEN RECORDED MAIL TO:**

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

Recorded In Official Records, Merced County

**KENT B. CHRISTENSEN**  
Merced County Recorder

8/10/2010  
8:45 AM  
RE05

CM City of Merced

G

Doc#: 2010-030606



Titles: 1 Pages: 19

Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

(Above for Recorder's Use Only)

**DEVELOPER AGREEMENT**

THIS AGREEMENT is made and entered into as of this 2<sup>nd</sup> day of August 2010, by and between the City of Merced, a California Charter Municipal Corporation ("City") and Della Wathen, individually, and Della Wathen as Trustee of the Spaulding G. Wathen Q-Tip Trust ("Owner").

**WITNESSETH**

WHEREAS, Owner has applied to the City for General Plan Amendment 10-02, Zone Change No. 410 and the establishment of Planned Development #72 (the "Entitlements") for the property located generally at the northeast corner of "G" Street and Yosemite Avenue, and as legally described on Exhibit "A," attached hereto and incorporated herein by this reference; and,

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

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

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

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

1. Owner, for himself and all successors thereto, agrees to pay all City and school district fees, taxes, and/or assessments in effect on the date of subdivision and/or permit approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time building permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc., and to comply with the additional conditions set forth in Exhibit “B,” and Design Standards for Planned Development #72 set forth in Exhibit “C,” attached hereto and incorporated herein by this reference. Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

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

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

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

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

5. City, on its part, agrees to approve the Entitlements in accordance with Exhibits "D and "E".

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

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

subdivision map approval, ordinance, resolution, use permit, or otherwise. The parties agree that this Paragraph does not apply to the approval of the final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit "A."

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.

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

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

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

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

14. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof. IN WITNESS WHEREOF, the parties have caused this Agreement to be

executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal Corporation

BY: John M. Bramble  
City Manager, John M. Bramble

ATTEST:  
JOHN M. BRAMBLE, CITY CLERK

BY: Samuel Ancom  
Assistant/Deputy City Clerk



(SEAL)

APPROVED AS TO FORM:

BY: Ken Rozell 7/24/10  
City Attorney Date

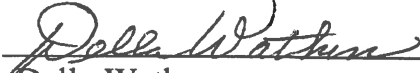
201593  
ACCOUNT DATA:

BY: Rudley P. [Signature]  
Verified by Finance Officer  
No funds to encumber. MRS 7/27/10  
FL 7/27/10

OWNER

DELLA WATHEN, Individually and as  
Trustee of the Spaulding G. Wathen Q-Tip  
Trust

By:

  
Della Wathen

ACKNOWLEDGEMENT

State of California

County of Merced

On July 22, 2010, before me, Karina Garza, a  
Notary Public, personally appeared,  
Della Wathen

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

K Garza  
Notary Public



(seal)



ACKNOWLEDGEMENT

State of California

County of Merced

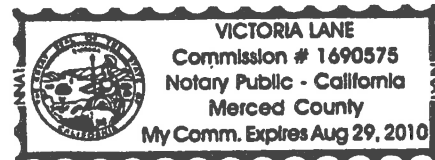
On August 9, 2010, before me, Victoria Lane, a  
Notary Public, personally appeared, John M. Bramble

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

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

WITNESS my hand and official seal.

Signature Victoria Lane  
Notary Public



(seal)

*Attach Exhibits A, B, C and D.*

**EXHIBIT 'A'**  
**LEGAL DESCRIPTION**

"Remainder C" and "Remainder D" as shown on the Subdivision Map Entitled "Mansionette Estates Unit 1" recorded in Volume 52, Page 32 of Merced County Records; also known as Assessor's Parcel Numbers (APN) 231-040-004, -005, and -006.

**Conditions of Approval for the  
Establishment of Planned Development (P-D) #72,  
Zone Change #410, General Plan Amendment #10-02,  
and Revision #3 to the Northeast Yosemite Specific Plan**

- \*1) The proposed project shall be constructed/designed as shown on Exhibit 1 (Planned Development map), Exhibit 2 (Phase One site plan) and Exhibits 3 and 4 (elevations) -- Attachments C, D, E, and F except as modified by the conditions.
- \*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 all applicable conditions of the Northeast Yosemite Specific Plan.
- \*4) All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- \*5) Approval of the General Plan Amendment, Revision to the Northeast Yosemite Specific Plan, Zone Change, and Planned Development Establishment (P-D #72) are subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
- \*6) In accordance with Merced Municipal Code Section 20.42.130; this project(s) will be constructed according to the following development schedule: construction of Phase One shall begin no later than July 5, 2011, with completion of construction according to the following schedule:

**Construction Schedule**

Building Type	Sq. Ft.	Commence Construction	Complete Construction
Pharmacy	17,000	Year 1	9 months
Bank	4,536	Year 1	9 months
Office Building C	4,800	Year 2	9 months
Office Building B	5,040	Year 2	9 months
Restaurant	7,930	Year 3	9 months
Office Building A	7,400	Year 3	9 months
Office Building D	4,800	Year 3	9 months
Hotel	24,000	Year 5	12 months

**EXHIBIT B**

## Conditions of Approval

### Page 2

Phase 2		Year 5-7	Varies
Phase 3		Year 8-10	Varies

On each anniversary of the approval of this application, an updated development schedule shall be submitted to the Planning Division.

- \*7) 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 thereof, or any of its officers, officials, employees, or agents.

- \*8) 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.
- \*9) 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.

- \*10) Conditional Use Permits for all future development on the site, including the offices, the restaurant, the bank, the restaurant, and the hotel, are required for all phases.
- \*11) The project shall comply with all mitigation measures outlined in Initial Study #10-06 listed in Attachment G.
- \*12) The drainage basin shall maintain the capacity necessary to serve the existing area it currently serves as well as the added capacity from all phases of this new project. The developer shall submit calculations demonstrating this prior to any building permits being issued for any phase of construction.
- 13) The drainage basin shall be designed to allow for a mix of recreational uses when not needed to hold storm water. If this is not possible, the area shall be designed to provide an attractive open-space feature for the development. The wrought-iron fence as proposed is acceptable with a landscape design and other features to make the area an attractive feature. Details to be addressed at the Conditional Use Permit stage.
- 14) The applicant shall construct all missing improvements per City Standards in G Street along the entire frontage of their property. This shall include, but are not limited to, a turn lane for north bound traffic turning into the new driveway entrance, a median with a southbound turn lane for driveway access, a bike lane, sidewalk, curb, gutter, and park strip and possible relocation of the traffic signal.
- 15) All necessary improvements along the property frontage developed with Phase One shall be completed with Phase One. All other required improvements shall be constructed as each phase develops.
- 16) Sandpiper Drive shall, at a minimum, be constructed from Yosemite Avenue north to the end of the property frontage associated with Phase One. The temporary termination of Sandpiper Drive shall have a cul-de-sac bulb and be constructed to City Standards. An alternative could be to construct Sandpiper Drive beyond Phase One in association with improvements bonded for with the Mansionette Estates subdivision. Details to be worked out with staff.
- 17) The developer shall provide a minimum of one transit stop and shelter with Phase One. The developer shall work with Merced County Transit (operators of "The Bus") to determine the best location for the transit stop. Details to be addressed at the Conditional Use Permit (CUP) stage.
- 18) It is highly encouraged that the transit shelter be constructed using the same high-quality materials palette as used within the development. Details to be addressed at the CUP stage.
- 19) The approval for Phase One includes all principally permitted uses within a Commercial Office (C-O) zone, except where otherwise specified (i.e., restaurant and hotel). All uses identified as "conditional uses" within a C-O zone may be allowed subject to Planning Commission approval.
- 20) The restaurant and hotel uses shall not be changed without obtaining all necessary approvals (Planning Commission recommendation and City Council approval). Any change of use for these buildings shall remain in keeping with providing specific services

## Conditions of Approval

### Page 4

that are needed to serve the immediate area and community in general. General retail uses shall not be allowed.

- 21) All buildings within Phase One shall be developed in accordance with Exhibits 2, 3, and 4 (Attachment D, E, and F). All construction shall be of high-quality materials with strict adherence to the materials palette shown on Exhibit 2 (Attachment E). All architectural features shall be pedestrian in scale and include a varied and articulated design to provide visual interest.
- 22) The design and materials palette shall apply to all buildings in Phase One. There shall be no variance from the design features for special brands or tenants. Corporate designs may be implemented as long as it is in keeping with the overall design of the project. Any design variations shall be approved by staff or subject to referral to the Planning Commission.
- 23) Bicycle racks shall be provided throughout the phase one development. The number of racks provided shall be a minimum of at least 10 percent of the number of vehicular parking spaces. Installation of bike racks within the future phases will be determined during the Conditional Use Permit phase of those approvals.
- 24) All signs for Phase One shall be in compliance with the North Merced Sign Ordinance and the sign program approved with the establishment of Planned Development (P-D) #72 (Attachment I). Details to be addressed at the CUP stage.
- 25) A maximum of two restaurants may be allowed. One, a family-style sit down restaurant in the freestanding building along G Street. The second may be of a fast-food variety, but shall not be allowed a drive-through. All other uses within the development, other than the hotel, shall be permitted or conditional uses allowed in the City's Commercial Office zone.
- 26) Appropriate turning radii shall be provided within the parking areas to allow for Fire Department access.
- 27) The developer shall work with the City's Refuse Department to appropriately place all refuse containers. Approval of these locations shall be included at the Conditional Use Permit stage.
- 28) The following modifications to the proposed project site plan for Phase One (Attachment D), subject to final approval at the Conditional Use Permit stage for the pharmacy, shall be made:
  - a. Provide a pedestrian and bicycle friendly entrance to the project site at the corner of G Street and Yosemite Avenue. The design shall be such that it encourages pedestrian and bicycle travel.
  - b. Provide continued pedestrian and bicycle connectivity throughout the site, linking each building to the next, by way of a designated pathway.
  - c. Pedestrian and bicycle pathways shall be distinctly identifiable by the use of pavers or similar feature. The inclusion of some form of landscaping is also encouraged.
  - d. Provide pedestrian and bicycle access from Yosemite Avenue and Sandpiper



Drive in addition to the access required at the corner of G Street and Yosemite Avenue. Parking spaces adjacent to the corner may be eliminated to achieve a wider area and special pavement shall be required to distinguish this area from parking/driving areas.

- e. Residential uses (R-3 Type) may be allowed within the "office" buildings, perhaps on a second floor.
  - f. Minor modifications to the building location and/or size may be approved by the Development Services Director or his designee.
- 29) Parking lot trees shall be installed to provide a 50 percent shade cover in the parking lot area. However, this may not be achieved by installing less than the minimum number of trees at a ratio of one tree for each six parking spaces.
  - 30) All buildings shall incorporate energy efficient features into the design and construction. LEED certification is not required. However, implementing features of LEED certified building is strongly encouraged.
  - 31) All necessary parcel maps shall be approved prior to any building permits being issued. At a minimum this will include a lot merger to merge parcels 231-040-004 and -005; and a lot split to divide the project site for Phase One from Phase Two.
  - 32) Truck loading facilities and trash refuse enclosures shall not be allowed along public street rights-of-way. Details to be addressed at the conditional use permit stage.
  - 33) If the property is split into multiple parcels, owners shall be required to record joint access and parking easements allowing free vehicular access and parking between parcels. Such easements shall be recorded as part of any parcel map or conditional use permit approval.
  - 34) Other than the driveways that appear on Exhibit 1 (project site plan), no additional driveway approaches shall be allowed on G Street. No driveways are allowed on Yosemite Avenue.
  - 35) The developer shall provide a land use diagram of the approved site plan showing all designated uses, approximate size of all buildings, parking, etc. This map will become the "Official" map for Planned Development #72. One "hard copy" map (36" x 24") and an electronic copy compatible with the City's Geographic Information System (GIS) shall be provided.

(\*) Denotes non-discretionary conditions.



**Planned Development (P-D) #72  
Development Standards**

<b>Design Category</b>	<b>Design/Development Standard</b>
<b>Land Use</b>	<p><b>Phase I</b>  <i>Commercial Office:</i> 11.4-acres at the north east corner of G Street and Yosemite Avenue. All permitted or conditional uses of the Commercial Office (C-O) zone, including the pharmacy at the corner of the development. A hotel, a free-standing, family-style restaurant, and a small fast-food style restaurant (no drive-through allowed) within one of the office buildings. Development and land use shall substantially comply with the uses and location as shown on the official Site Utilization Plan map and site plan for Phase I; except as modified by Conditions of Approval.</p> <p><b>Phase II</b>  <i>High-Medium Density Residential:</i> Approximately 10-acres north of the Commercial Uses beginning approximately 827-feet north of the corner of G Street and Yosemite Avenue.</p> <p><b>Phase III</b>  <i>High-Medium Density Residential:</i> Approximately 3.52-acres approximately 400-feet north of Yosemite Avenue, east of future Sandpiper Drive.</p> <p><i>Police Station:</i> Approximately 4.67-acres at the northwest corner of Yosemite Avenue and Mansionette Avenue.</p>
<b>Commercial Development Standards</b>	
<b>Setback Requirements</b>	<i>Exterior Yard:</i> 10 feet <i>Interior Yards:</i> 5 feet
<b>Height</b>	40 feet
<b>Building Design</b>	All building designs shall substantially comply with the elevations provided and approved with P-D #72.
<b>Building Materials</b>	High-quality materials shall be used. All materials shall comply with the material palette approved with P-D #72.
<b>Parking Requirements</b>	<p><i>Vehicles:</i> Per City of Merced Parking Requirements</p> <p><i>Bicycles:</i> The number of racks provided shall be a minimum of at least 10 percent of the number of vehicular parking spaces.</p>
<b>Signing</b>	Refer to Sign Program Approved with P-D #72.

See next page for residential development standards.

<b><i>Residential Development Standards</i></b>	
<b>Density</b>	<b>High-Medium Density (12 to 24 units per acre)</b>
<b>Lot Coverage and Setback Requirements</b>	<p>Must comply with requirements of R-3-2 zoning.</p> <p><b><i>Area per dwelling unit:</i></b> One unit for every 2,000 square feet of lot area</p> <p><b><i>Setbacks:</i></b></p> <p><b><i>Exterior Yard:</i></b> 15 feet</p> <p><b><i>Interior Yard (buildings not more than 2-stories or 25 feet in height):</i></b></p> <p>One Yard: 10 feet.                      Other Yards: 5 feet</p> <p><b><i>Interior Yard (buildings more than 2 stories or 25 feet in height):</i></b></p> <p>All interior yards: 10 feet</p>
<b>Maximum Lot Coverage</b>	55%
<b>Distance Between Main Buildings</b>	15 feet
<b>Building Height</b>	Maximum 3-stories or 40 feet
<b>Building Design and Materials</b>	To be determined at the Conditional Use Permit stage, but shall be of high quality materials and design.
<b>Parking</b>	<p><b><i>Vehicles:</i></b> Per City of Merced Parking Requirements</p> <p><b><i>Bicycles:</i></b> Determined at the Conditional Use Permit stage</p>
<b>Fencing</b>	All fencing shall be of high-quality materials. Any fencing along G Street shall be wrought-iron or similar material. Solid fencing is not permitted along G Street. Vines or other landscaping may be used to provide privacy.

Zone Change/ PD Establishment

MERCY

SANDPIPER

G

BOBOLINK

KINGFISHER

NIGHTINGALE

MOCKINGBIRD

HUMMINGBIRD

BOBWHITE

MANSIONETTE

REDWING

Planned  
Development  
#72

YOSEMITE

EXHIBIT D

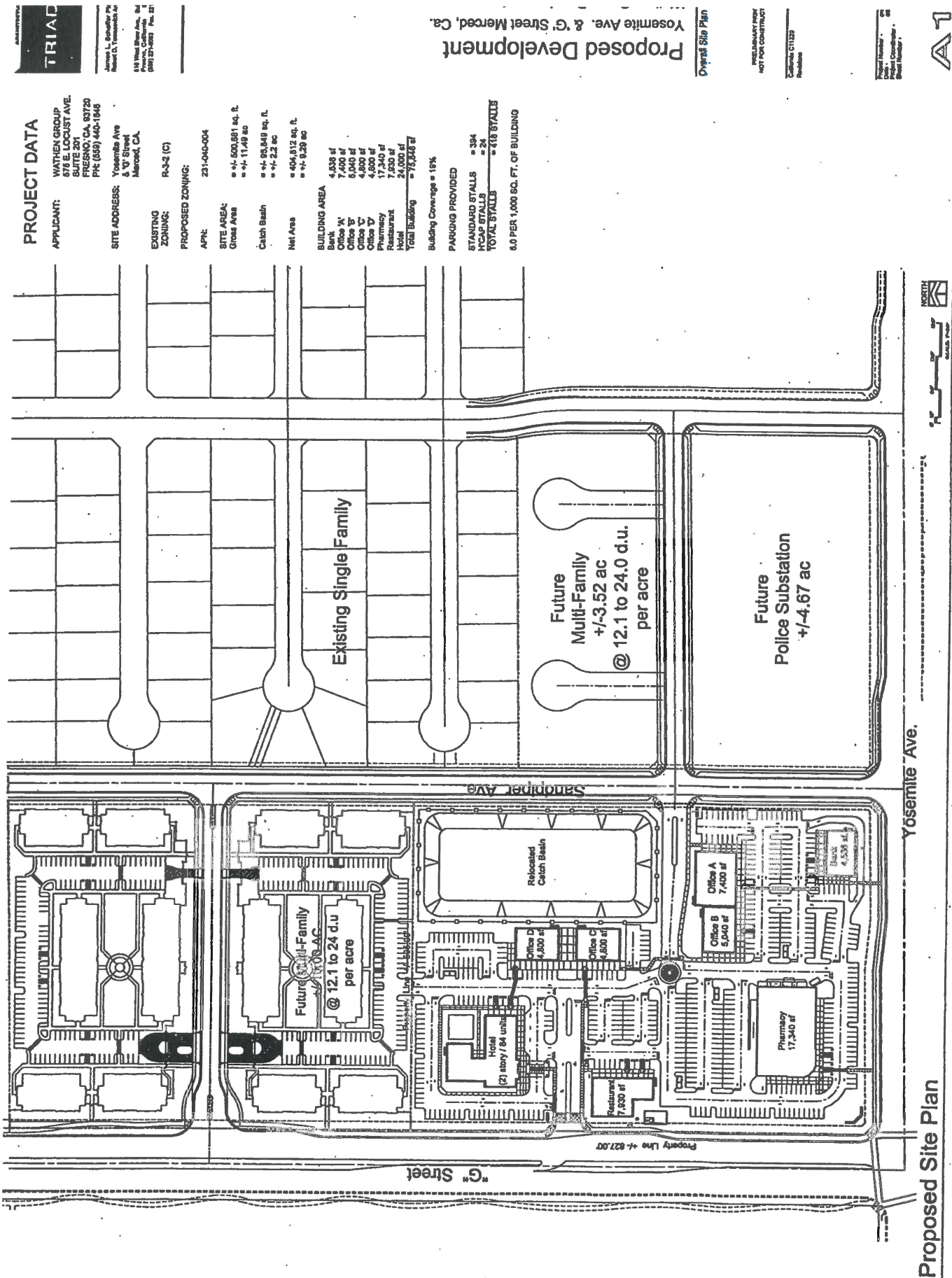
CORDOVA

N

GATEWAY

# EXHIBIT E

DATE: 05/13/2014  
 DRAWN: J. L. B. 10/10/2014  
 CHECKED: J. L. B. 10/10/2014



Proposed Site Plan

Yosemite Ave.



## PROJECT DATA

**APPLICANT:** WATHEN GROUP  
 578 E. LOCUST AVE.  
 SUITE 201  
 FRESNO, CA 93720  
 PH: (559) 440-1846

**SITE ADDRESS:** Yosemite Ave  
 & G Street  
 Merced, CA

**EXISTING ZONING:** R-3-2 (C)

**PROPOSED ZONING:**

**APN:** 231-000-004

**SITE AREA:**  
 Gross Area = +/- 500,881 sq. ft.  
 = +/- 11.49 ac

**Catch Basin:**  
 = +/- 95,648 sq. ft.  
 = +/- 2.2 ac

**Net Area:**  
 = 404,232 sq. ft.  
 = +/- 9.29 ac

### BUILDING AREA

Bank 4,538 sq. ft.  
 Office A 7,400 sq. ft.  
 Office B 5,040 sq. ft.  
 Office C 4,800 sq. ft.  
 Pharmacy 17,340 sq. ft.  
 Restaurant 7,930 sq. ft.  
 Hotel 24,000 sq. ft.  
 Total Building = 78,048 sq. ft.

Building Coverage = 19%

### PARKING PROVIDED

STANDARD STALLS = 394  
 HCAS STALLS = 36  
**TOTAL STALLS = 430 STALLS**  
 6.0 PER 1,000 SQ. FT. OF BUILDING

Proposed Development  
 Yosemite Ave. & G Street Merced, Ca.

Overall Site Plan

NOT A CONTRACT  
 NOT FOR CONSTRUCTION

California C11223  
 Revision

Project Number: 10000000000000000000  
 Project Description: 10000000000000000000  
 Sheet Number: 1

A1

TRIAD

James L. Schuller, P.E.  
 Registered Civil Engineer No. 44567  
 110 West 10th Ave., 4th  
 Fresno, California 93720  
 (559) 271-5557 Fax: 271-5558

EXHIBIT "E"

Recorded in Official Records, Merced County

**KENT B. CHRISTENSEN**  
Merced County Recorder

1/25/2012  
9:17 AM  
RE06

**RECORDING REQUESTED BY:**

City of Merced, A California charter  
municipal corporation

**WHEN RECORDED MAIL TO:**

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

CM City of Merced

G

Doc#: 2012 - 002753



Titles:	1	Pages:	26
Fees	0.00		
Taxes	0.00		
Other	0.00		
PAID	\$0.00		

(Above for Recorder's Use Only)

**DEVELOPER AGREEMENT**

THIS AGREEMENT is made and entered into as of this 17<sup>th</sup> day of January 2012, by and between the City of Merced, a California Charter Municipal Corporation ("City") and Della Wathen, individually, and Della Wathen as Trustee of the Spaulding G. Wathen Q-Tip Trust ("Owner").

**WITNESSETH**

WHEREAS, Owner has applied to the City for a Site Utilization Plan Revision to Planned Development #72 and a General Plan Amendment for the property located generally at the northeast corner of "G" Street and Yosemite Avenue, and as legally described on Exhibit "A," 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 building permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc., and to comply with the additional conditions previously approved for Planned Development #72 set forth in Exhibit “B,” Design Standards for Planned Development #72 set forth in Exhibit “C,” and conditions of approval found in Planning Commission Resolution #2995 set forth in Exhibit “D,” attached hereto and incorporated herein by this reference. Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

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

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

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

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

5. City, on its part, agrees to rezone the subject property and change the General Plan (City approval) in accordance with Exhibits "E and "F."

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

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

subdivision map approval, ordinance, resolution, use permit, or otherwise. The parties agree that this Paragraph does not apply to the approval of the final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit "A."

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.

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

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

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

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

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



15. City and Owner agree that City shall not issue an encroachment permit to Owner for the driveway on Yosemite Avenue if Owner is not in full compliance with the terms of this Agreement.

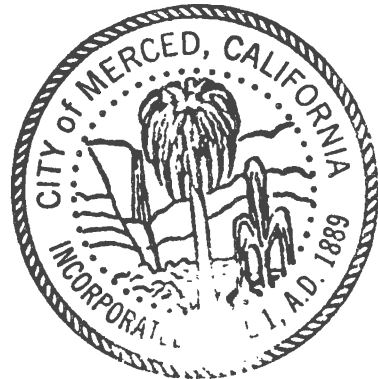
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal Corporation

BY: John M. Bramble  
City Manager  
John M. Bramble

ATTEST:  
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]  
Assistant/Deputy City Clerk



(SEAL)

APPROVED AS TO FORM:

BY: [Signature] 12/27/2011  
City Attorney Dan

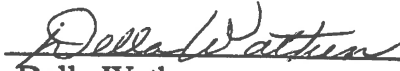
212105  
ACCOUNT DATA:

BY: [Signature]  
Verified by Finance Officer

No funds to encumber. MK 1/17/12  
FC 1/17/12 JK

OWNER

DELLA WATHEN, Individually and as  
Trustee of the Spaulding G. Wathen Q-Tip  
Trust

By:   
Della Wathen

## ACKNOWLEDGEMENT

State of California


County of Merced

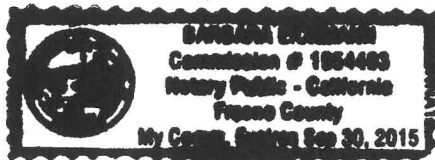
On 12-29 - 2011, 2012, before me, Barbara Eickmann, a  
Notary Public, personally appeared, Della Wathen

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   
Notary Public (seal)



GOVERNMENT CODE 27361.7

I CERTIFY UNDER PENALTY OF PERJURY THAT THE  
NOTARY SEAL ON THE DOCUMENT TO WHICH THIS  
STATEMENT IS ATTACHED READ AS FOLLOWS:

NAME OF NOTARY: Barbara Eickmann

DATE COMMISSION EXPIRES: Sep 30, 2015

COMMISSION NUMBER: 1954493

PLACE OF EXECUTION: Fresno County

EXECUTION DATE: 12-29-2011

SIGNATURE: 

FIRM NAME (IF APPLICABLE): \_\_\_\_\_

\_\_\_\_\_

ACKNOWLEDGEMENT

State of California

County of Merced

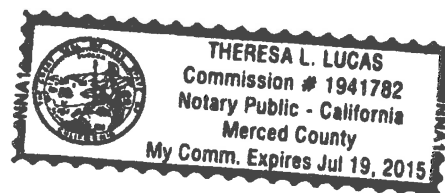
On January 18, 2012, before me, Theresa L Lucas, a Notary Public,  
personally appeared, John M Bramble

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 Theresa L Lucas  
Notary Public



(seal)

EXHIBIT 'A'  
LEGAL DESCRIPTION

"Remainder C" and "Remainder D" as shown on the Subdivision Map Entitled "Mansionette Estates Unit 1" recorded in Volume 52, Page 32 of Merced County Records; also known as Assessor's Parcel Numbers (APN) 231-040-004, -005, and -020.

Conditions of Approval for the  
Establishment of Planned Development (P-D) #72,  
Zone Change #410, General Plan Amendment #10-02,  
and Revision #3 to the Northeast Yosemite Specific Plan

- \*1) The proposed project shall be constructed/designed as shown on Exhibit 1 (Planned Development map), Exhibit 2 (Phase One site plan) and Exhibits 3 and 4 (elevations) -- Attachments C, D, E, and F except as modified by the conditions.
- \*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 all applicable conditions of the Northeast Yosemite Specific Plan.
- \*4) All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- \*5) Approval of the General Plan Amendment, Revision to the Northeast Yosemite Specific Plan, Zone Change, and Planned Development Establishment (P-D #72) are subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
- \*6) In accordance with Merced Municipal Code Section 20.42.130, this project(s) will be constructed according to the following development schedule: construction of Phase One shall begin no later than July 5, 2011, with completion of construction according to the following schedule:

**Construction Schedule**

Building Type	Sq. Ft.	Commence Construction	Complete Construction
Pharmacy	17,000	Year 1	9 months
Bank	4,536	Year 1	9 months
Office Building C	4,800	Year 2	9 months
Office Building B	5,040	Year 2	9 months
Restaurant	7,930	Year 3	9 months
Office Building A	7,400	Year 3	9 months
Office Building D	4,800	Year 3	9 months
Hotel	24,000	Year 5	12 months

**EXHIBIT B**

Phase 2		Year 5-7	Varies
Phase 3		Year 8-10	Varies

On each anniversary of the approval of this application, an updated development schedule shall be submitted to the Planning Division.

- \*7) 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 thereof, or any of its officers, officials, employees, or agents.

- \*8) 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.
- \*9) 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.



- \*10) Conditional Use Permits for all future development on the site, including the offices, the restaurant, the bank, the restaurant, and the hotel, are required for all phases.
- \*11) The project shall comply with all mitigation measures outlined in Initial Study #10-06 listed in Attachment G.
- \*12) The drainage basin shall maintain the capacity necessary to serve the existing area it currently serves as well as the added capacity from all phases of this new project. The developer shall submit calculations demonstrating this prior to any building permits being issued for any phase of construction.
- 13) The drainage basin shall be designed to allow for a mix of recreational uses when not needed to hold storm water. If this is not possible, the area shall be designed to provide an attractive open-space feature for the development. The wrought-iron fence as proposed is acceptable with a landscape design and other features to make the area an attractive feature. Details to be addressed at the Conditional Use Permit stage.
- 14) The applicant shall construct all missing improvements per City Standards in G Street along the entire frontage of their property. This shall include, but are not limited to, a turn lane for north bound traffic turning into the new driveway entrance, a median with a southbound turn lane for driveway access, a bike lane, sidewalk, curb, gutter, and park strip and possible relocation of the traffic signal.
- 15) All necessary improvements along the property frontage developed with Phase One shall be completed with Phase One. All other required improvements shall be constructed as each phase develops.
- 16) Sandpiper Drive shall, at a minimum, be constructed from Yosemite Avenue north to the end of the property frontage associated with Phase One. The temporary termination of Sandpiper Drive shall have a cul-de-sac bulb and be constructed to City Standards. An alternative could be to construct Sandpiper Drive beyond Phase One in association with improvements bonded for with the Mansionette Estates subdivision. Details to be worked out with staff.
- 17) The developer shall provide a minimum of one transit stop and shelter with Phase One. The developer shall work with Merced County Transit (operators of "The Bus") to determine the best location for the transit stop. Details to be addressed at the Conditional Use Permit (CUP) stage.
- 18) It is highly encouraged that the transit shelter be constructed using the same high-quality materials palette as used within the development. Details to be addressed at the CUP stage.
- 19) The approval for Phase One includes all principally permitted uses within a Commercial Office (C-O) zone, except where otherwise specified (i.e., restaurant and hotel). All uses identified as "conditional uses" within a C-O zone may be allowed subject to Planning Commission approval.
- 20) The restaurant and hotel uses shall not be changed without obtaining all necessary approvals (Planning Commission recommendation and City Council approval). Any change of use for these buildings shall remain in keeping with providing specific services

that are needed to serve the immediate area and community in general. General retail uses shall not be allowed.

- 21) All buildings within Phase One shall be developed in accordance with Exhibits 2, 3, and 4 (Attachment D, E, and F). All construction shall be of high-quality materials with strict adherence to the materials palette shown on Exhibit 2 (Attachment E). All architectural features shall be pedestrian in scale and include a varied and articulated design to provide visual interest.
- 22) The design and materials palette shall apply to all buildings in Phase One. There shall be no variance from the design features for special brands or tenants. Corporate designs may be implemented as long as it is in keeping with the overall design of the project. Any design variations shall be approved by staff or subject to referral to the Planning Commission.
- 23) Bicycle racks shall be provided throughout the phase one development. The number of racks provided shall be a minimum of at least 10 percent of the number of vehicular parking spaces. Installation of bike racks within the future phases will be determined during the Conditional Use Permit phase of those approvals.
- 24) All signs for Phase One shall be in compliance with the North Merced Sign Ordinance and the sign program approved with the establishment of Planned Development (P-D) #72 (Attachment I). Details to be addressed at the CUP stage.
- 25) A maximum of two restaurants may be allowed. One, a family-style sit down restaurant in the freestanding building along G Street. The second may be of a fast-food variety, but shall not be allowed a drive-through. All other uses within the development, other than the hotel, shall be permitted or conditional uses allowed in the City's Commercial Office zone.
- 26) Appropriate turning radii shall be provided within the parking areas to allow for Fire Department access.
- 27) The developer shall work with the City's Refuse Department to appropriately place all refuse containers. Approval of these locations shall be included at the Conditional Use Permit stage.
- 28) The following modifications to the proposed project site plan for Phase One (Attachment D), subject to final approval at the Conditional Use Permit stage for the pharmacy, shall be made:
  - a. Provide a pedestrian and bicycle friendly entrance to the project site at the corner of G Street and Yosemite Avenue. The design shall be such that it encourages pedestrian and bicycle travel.
  - b. Provide continued pedestrian and bicycle connectivity throughout the site, linking each building to the next, by way of a designated pathway.
  - c. Pedestrian and bicycle pathways shall be distinctly identifiable by the use of pavers or similar feature. The inclusion of some form of landscaping is also encouraged.
  - d. Provide pedestrian and bicycle access from Yosemite Avenue and Sandpiper

Drive in addition to the access required at the corner of G Street and Yosemite Avenue. Parking spaces adjacent to the corner may be eliminated to achieve a wider area and special pavement shall be required to distinguish this area from parking/driving areas.

- e. Residential uses (R-3 Type) may be allowed within the "office" buildings, perhaps on a second floor.
  - f. Minor modifications to the building location and/or size may be approved by the Development Services Director or his designee.
- 29) Parking lot trees shall be installed to provide a 50 percent shade cover in the parking lot area. However, this may not be achieved by installing less than the minimum number of trees at a ratio of one tree for each six parking spaces.
  - 30) All buildings shall incorporate energy efficient features into the design and construction. LEED certification is not required. However, implementing features of LEED certified building is strongly encouraged.
  - 31) All necessary parcel maps shall be approved prior to any building permits being issued. At a minimum this will include a lot merger to merge parcels 231-040-004 and -005; and a lot split to divide the project site for Phase One from Phase Two.
  - 32) Truck loading facilities and trash refuse enclosures shall not be allowed along public street rights-of-way. Details to be addressed at the conditional use permit stage.
  - 33) If the property is split into multiple parcels, owners shall be required to record joint access and parking easements allowing free vehicular access and parking between parcels. Such easements shall be recorded as part of any parcel map or conditional use permit approval.
  - 34) Other than the driveways that appear on Exhibit 1 (project site plan), no additional driveway approaches shall be allowed on G Street. No driveways are allowed on Yosemite Avenue.
  - 35) The developer shall provide a land use diagram of the approved site plan showing all designated uses, approximate size of all buildings, parking, etc. This map will become the "Official" map for Planned Development #72. One "hard copy" map (36" x 24") and an electronic copy compatible with the City's Geographic Information System (GIS) shall be provided.

(\*) Denotes non-discretionary conditions.

**Planned Development (P-D) #72  
Development Standards**

<b>Design Category</b>	<b>Design/Development Standard</b>
<b>Land Use</b>	<p><b>Phase I</b>  <i>Commercial Office:</i> 11.4-acres at the northeast corner of G Street and Yosemite Avenue. All permitted or conditional uses of the Commercial Office (C-O) zone, including the pharmacy at the corner of the development. A hotel, a free-standing, family-style restaurant, and a small fast-food style restaurant (no drive-through allowed) within one of the office buildings. Development and land use shall substantially comply with the uses and location as shown on the official Site Utilization Plan map and site plan for Phase I, except as modified by Conditions of Approval.</p> <p><b>Phase II</b>  <i>High-Medium Density Residential:</i> Approximately 10-acres north of the Commercial Uses beginning approximately 827-feet north of the corner of G Street and Yosemite Avenue.</p> <p><b>Phase III</b>  <i>High-Medium Density Residential:</i> Approximately 3.52-acres approximately 400-feet north of Yosemite Avenue, east of future Sandpiper Drive.</p> <p><i>Police Station:</i> Approximately 4.67-acres at the northwest corner of Yosemite Avenue and Mansionette Avenue.</p>
<b>Commercial Development Standards</b>	
<b>Setback Requirements</b>	<i>Exterior Yard:</i> 10 feet <i>Interior Yards:</i> 5 feet
<b>Height</b>	40 feet
<b>Building Design</b>	All building designs shall substantially comply with the elevations provided and approved with P-D #72.
<b>Building Materials</b>	High-quality materials shall be used. All materials shall comply with the material palette approved with P-D #72.
<b>Parking Requirements</b>	<p><i>Vehicles:</i> Per City of Merced Parking Requirements</p> <p><i>Bicycles:</i> The number of racks provided shall be a minimum of at least 10 percent of the number of vehicular parking spaces.</p>
<b>Signing</b>	Refer to Sign Program Approved with P-D #72.

See next page for residential development standards.

<b><i>Residential Development Standards</i></b>	
<b>Density</b>	<b>High-Medium Density (12 to 24 units per acre)</b>
<b>Lot Coverage and Setback Requirements</b>	<p>Must comply with requirements of R-3-2 zoning.</p> <p><b><i>Area per dwelling unit:</i></b> One unit for every 2,000 square feet of lot area</p> <p><b><i>Setbacks:</i></b></p> <p><b><i>Exterior Yard:</i></b> 15 feet</p> <p><b><i>Interior Yard (buildings not more than 2-stories or 25 feet in height):</i></b></p> <p>One Yard: 10 feet.                      Other Yards: 5 feet</p> <p><b><i>Interior Yard (buildings more than 2 stories or 25 feet in height):</i></b></p> <p>All interior yards: 10 feet</p>
<b>Maximum Lot Coverage</b>	55%
<b>Distance Between Main Buildings</b>	15 feet
<b>Building Height</b>	Maximum 3-stories or 40 feet
<b>Building Design and Materials</b>	To be determined at the Conditional Use Permit stage, but shall be of high quality materials and design.
<b>Parking</b>	<p><b><i>Vehicles:</i></b> Per City of Merced Parking Requirements</p> <p><b><i>Bicycles:</i></b> Determined at the Conditional Use Permit stage</p>
<b>Fencing</b>	All fencing shall be of high-quality materials. Any fencing along G Street shall be wrought-iron or similar material. Solid fencing is not permitted along G Street. Vines or other landscaping may be used to provide privacy.

**CITY OF MERCED**  
**Planning Commission**

**Resolution #2995**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of November 9, 2011, held a public hearing and considered **General Plan Amendment #11-05 and Site Utilization Plan (SUP) Revision #1 to Planned Development (P-D) #72**, initiated by Fremming, Parson and Pecchenino, applicant for Della Wathen, property owner. This application involves a request to allow an exception to General Plan Policies 1.3.j and 1.3.k dealing with the placement of driveways near major intersections to allow a driveway on Yosemite Avenue. Site Utilization Plan (SUP) Revision #1 to Planned Development (P-D) #72 would allow a change in the land use designation along the eastern portion of the parcel (generally located at the northeast corner of G Street and Yosemite Avenue) from "drainage basin" to "commercial office" to allow the addition of four additional office buildings ranging in size from 5,760 square feet to 6,720 square feet, and to relocate the drainage basin to a 3.53-acre parcel (generally located between the future Sandpiper Avenue and Mansionette Drive) and to change the land use designation for this parcel from High-Medium Density (HMD) Residential to "drainage basin." The SUP Revision also includes the addition of a 6,000 square-foot office building along the southern property line of the parcel (generally located at the northeast corner of G Street and Yosemite Avenue) and the increase in floor area for two office buildings from 4,800 square feet each to 6,720 square feet and 7,200 square feet respectively; also known as Assessor's Parcel Numbers 231-040-004 and 231-040-020; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through P of Staff Report #11-17; 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 hereby recommend to City Council adoption of a Negative Declaration regarding Environmental Review #11-25, and approval of General Plan Amendment #11-05 and Site Utilization Plan Revision #1 to Planned Development #72, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner Ward, seconded by Commissioner Colby, and carried by the following vote:

AYES: Commissioners McCoy, Madayag, Colby, Ward, Amey, Acheson, and Chairperson Cervantes  
NOES: None  
ABSENT: None  
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 2995

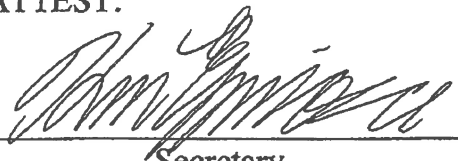
Page 2

November 9, 2011

Adopted this 9<sup>th</sup> day of November 2011

  
\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
\_\_\_\_\_  
Secretary

Attachment:

Exhibit A – Conditions of Approval

n:\shared\planning\PC Resolutions\GPA#11-05-SUP REV#1 TO PD#72 Wathen

**Conditions of Approval**  
**Planning Commission Resolution #2995**  
**General Plan Amendment #11-05**  
**Site Utilization Plan Revision #1 to Planned Development #72**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations), -- Attachments B and F of Staff Report #11-17, except as modified by the conditions.
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 conditions set forth in Planning Commission Resolution #2974 and City Council Resolution #2010-73 for General Plan Amendment #10-02 previously approved for this project and Ordinance #2358 for the Establishment of Planned Development #72.
4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. Approval of the General Plan Amendment and Site Utilization Plan Revision is subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
6. In accordance with Merced Municipal Code Section 20.42.130, this project(s) will be constructed according to the following development schedule (this schedule includes the previously approved project):



Building Type	Sq. Ft.	Commence Construction	Complete Construction
<b>Hotel</b>			
84-unit Hotel	24,000	Year 4	12 months
<b>Office</b>			
Building A*	6,000	Year 2	9 months
Building B-1	7,400	Year 3	9 months
Building B-2	2,540	Year 2	9 months
Building B-2 (food & beverage)	2,500	Year 2	9 months
Building C	5,760	Year 6	9 months
Building D	6,000	Year 6	9 months
Building E*	6,720	Year 5	9 months
Building F*	6,720	Year 5	9 months
Building G*	6,720	Year 6	9 months
Building H*	7,200	Year 6	9 months
<b>Restaurant</b>			
Family Style	5,883	Year 3	9 months
<b>Bank</b>			
Bank with drive up window	4,536	Year 2	9 months
<b>Pharmacy</b>			
Pharmacy with drive up window	17,340	Year 1	9 months

\*new buildings approved with this proposal

On each anniversary of the approval of this application, an updated development schedule shall be submitted to the Planning Division.

7. 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,

EXHIBIT A

of Planning Commission Resolution #2995

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 (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

8. 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.
9. Community Facilities District (CFD) formation is required for annual operating costs for storm drainage, public landscaping within City rights-of-way, street trees, and street lights. CFD procedures shall be initiated before 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.
10. Conditional Use Permits for all future development on the site, including the offices, the restaurant, the bank, and the hotel, are required for all phases.
11. The project shall comply with all mitigation measures outlined in Planning Commission Resolution #2974 and City Council Resolution #2010-73.
12. The location of the driveway on Yosemite Avenue shall be approved as shown on Exhibit 1 (site plan). The driveway shall be right-in/right-out only.

13. The project shall comply with all development standards for Planned Development (P-D) #72. The design and materials palette previously approved for this site shall apply to the additional five buildings. There shall be no variance from the design features for special brands or tenants. Corporate designs may be implemented as long as it is in keeping with the overall design of the project. Any design variations shall be approved by staff or subject to referral to the Planning Commission.
14. The drainage basin shall maintain the capacity necessary to serve the existing area it currently serves as well as the added capacity from all phases of this new project. The developer shall submit calculations demonstrating this prior to any building permits being issued for any phase of construction or for the relocation of the drainage basin (whichever comes first).
15. The developer shall provide a land use diagram of the approved site plan showing all designated uses, approximate size of all buildings, parking, etc. This map will become the "Official" map for Planned Development #72. One "hard copy" map (36" x 24") and an electronic copy compatible with the City's Geographic Information System (GIS) shall be provided.
16. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department access.
17. All signing shall comply with the previously approved sign program for this site and the North Merced Sign Ordinance.
18. The City reserves the right to periodically review the operation of the driveway on Yosemite Avenue. If problems arise (i.e., excessive traffic accidents or traffic delays, etc.), this approval may be subject to review and modification or revocation by the City of Merced after a duly noticed public hearing.
19. The drainage basin shall be designed to allow a small open-space development on the western 0.71-acres of Assessor's Parcel Number (APN) 231-040-020. This area shall be landscaped with ground cover and trees. Details on the design shall be worked out with staff prior to construction. This area shall be open to the public and all maintenance costs shall be included with the formation of the Community Facilities District.

20. A wrought-iron fence shall be installed on the three exterior sides (south, east, and west) of the drainage basin with a minimum 15-foot-wide landscape area provided. Details for the landscape area shall be worked out with staff during the plan review of the drainage basin. A minimum 6-foot-high block wall shall be constructed along the northern property line. In no case shall a gap be left between the existing residential fences and the new fencing around the basin. All proper approvals from the homeowners shall be obtained prior to making any modifications to their fences.
21. Access to the basin shall be from Mansionette Drive. Access shall be provided per City Standards.
22. The approval of the five additional office buildings includes all principally permitted uses within a Commercial Office (C-O) zone. All uses identified as "conditional uses" within a C-O zone may be allowed subject to Planning Commission approval.
23. The developer shall work with the City's Refuse Department to appropriately place all refuse containers. Approval of these locations shall be included at the Conditional Use Permit stage.
24. All buildings shall incorporate energy efficient features into the design and construction. LEED certification is not required. However, implementing features of LEED certified building is strongly encouraged.
25. Truck loading facilities and trash refuse enclosures shall not be allowed along public street rights-of-way. Details to be addressed at the conditional use permit stage.
26. Timing for the construction of the developer's share of the new road between the future Police Station and the proposed drainage basin shall be determined in consultation with the City Engineer and Director of Development Services prior to construction of the drainage basin or within two months from the date of approval, whichever comes sooner.

n:\shared\planning\PC Resolutions\GPA#11-05/SUP REV#1 TO PD#72 Exhibit A

Site Utilization Plan Revision #1 to Planned Development #72

UNIVERSITY

COMMUNITY COLLEGE EA

Parcel #1

Parcel #3

Change from Drainage Basin to Commercial Office  
(approximate location)

G

SANDPIPER

Parcel #2

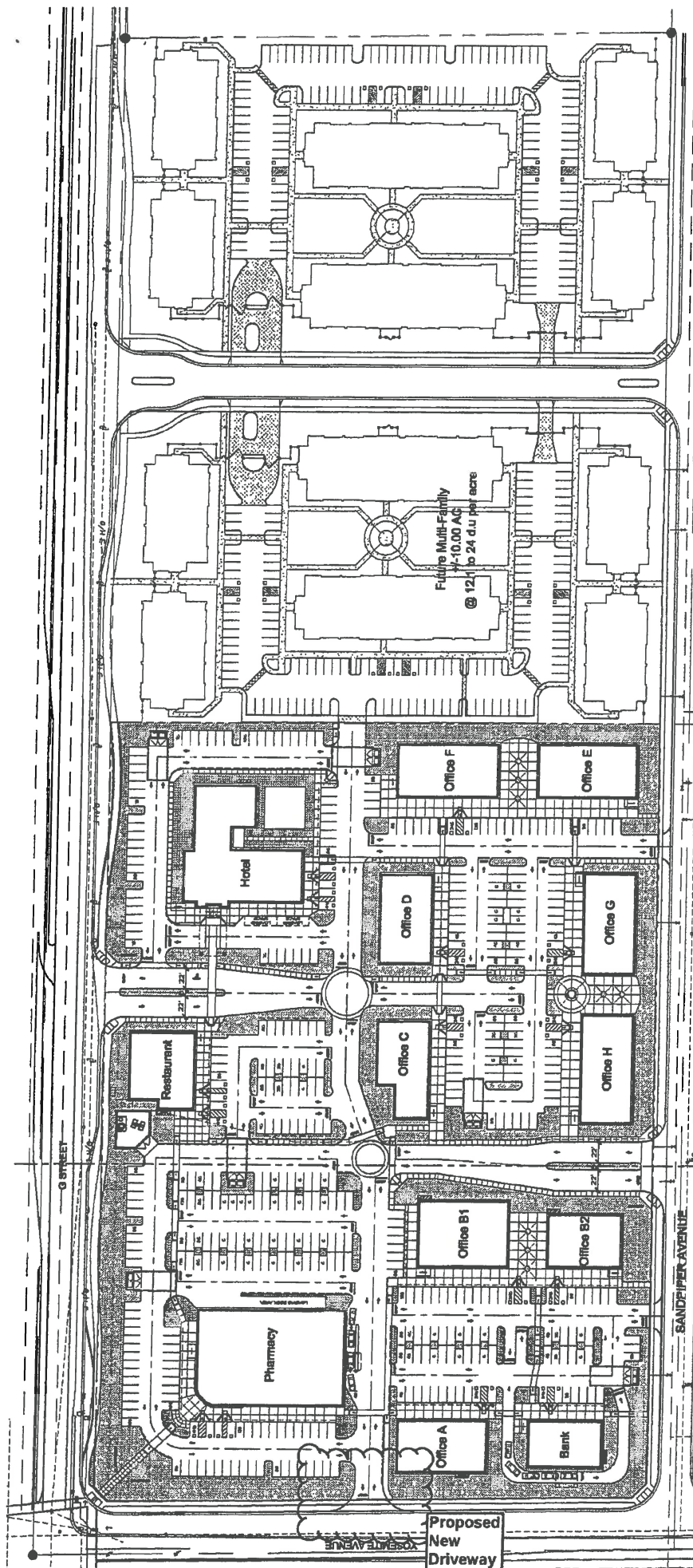
Change from HMD Residential to Drainage Basin

Future Police  
Station

YOSEMITE

CORDOVA





<b>Site Area:</b>	11.5 ACRES	= 500,799 SF
<b>Building Area:</b>		
HOTEL	= 24,000 SF	
RESTAURANT	= 5,883 SF	
PHARMACY	= 17,340 SF	
BANK	= 4,536 SF	
OFFICE A	= 6,000 SF	
OFFICE B1	= 7,400 SF	
OFFICE B2	= 5,700 SF	
OFFICE C	= 6,000 SF	
OFFICE D	= 6,720 SF	
OFFICE E	= 6,720 SF	
OFFICE F	= 6,720 SF	
OFFICE G	= 6,720 SF	
OFFICE H	= 7,200 SF	
<b>TOTAL AREA</b>	= 109,319 SF	
<b>SITE COVERAGE</b>	= 21.8%	
<b>Parking:</b>		
<b>PARKING REQUIRED:</b>		
HOTEL	1 STALL / 3 BEDROOMS AFTER 6 x 6 STALLS	
(94 BEDROOMS - 6 x 6)	18 / 3 = 26	6) = 32 STALLS
RESTAURANT:	1 STALL / 25 SEATS. (300 SEATS / 25) = 60 STALLS	
PHARMACY:	1 STALL / 300 SF. (17,340 SF / 300) = 58 STALLS	
BANK:	1 STALL / 250 SF. (4,536 SF / 250) = 19 STALLS	
OFFICE A - H	1 STALL / 250 SF. (57,160 SF / 250) = 231 STALLS	
<b>TOTAL PARKING REQUIRED</b>	= 420 STALLS	
<b>PARKING PROVIDED</b>	= 485 STALLS	
<b>PARKING RATIO:</b>	3.12 STALLS / 1,000 SF	



SCALE: 1"=100'

# **OVERALL SITE PLAN - Revised Scheme 5**

DATE: 11.03.11 2:30 pm



EXHIBIT "F"

31271

RECORDED BY

*Dept. of Public Works*

DEC 01 1989 At 10:00 Am

VOL 2788 PAGE 553

OFF. RECORDS OF  
MERCED COUNTY  
CALIFORNIA  
JAMES L. BALL  
Recorder

DH

When recorded mail to:

Department of Public Works  
Road Division  
DPW - 800-188

Department of Public Works  
County of Merced

AGREEMENT  
(Deferment of Construction)

THIS AGREEMENT is made this 30<sup>th</sup> day of Nov, 1989,  
by and between the County of Merced, hereinafter designated  
and called the "County", and Spalding G. Wathen and Delia  
Wathen hereinafter designated and called the "Owner", without  
regard for number or gender.

RECITAL

WHEREAS, Owner has filed with the County a certain Minor  
Subdivision Application No. 3519 for the development of land  
owned by Owner, and

WHEREAS, Owner desires to defer construction of perma-  
nent improvements hereinafter specified for a certain parcel  
of land situated in the County of Merced, State of Califor-  
nia, being described as follows:

VOL 2788 PAGE 553

All of that parcel of land delineated on "RECORD OF SURVEY FOR SPALDING G. WATHEN" recorded in Volume 18 at Page 38 of Record of Surveys, Merced County Records.

EXCEPTING THEREFROM, that parcel of land shown as Parcel 2 according the "PARCEL MAP FOR SPALDING G. WATHEN" recorded in Volume 50 of Parcel Maps at Page 16, Merced County Records.

NOW, THEREFORE, in consideration of approval of said site plan, the Owner and the County do hereby mutually agree as follows:

#### **I. AGREEMENT BINDING ON SUCCESSORS IN INTEREST**

This agreement is an instrument affecting the title or possessions of the real property described herein. All the terms, covenants and conditions herein imposed shall be binding upon and inure to the benefit of the successors in interest of Owner. Upon the sale or division of the property described herein the terms of this agreement shall apply and the owner of said parcel shall succeed to the obligations imposed on Owner of this agreement. Upon annexation to any City, Owner agrees to fulfill all the terms of this agreement upon demand by such City as though Owner has contracted with such City originally. Any annexing City shall have all the rights of a third party beneficiary.

#### **II. STREET AND DRAINAGE IMPROVEMENTS**

A. County and Owner agree that the improvements set forth in this section may be deferred.

B. Owner agrees to construct the following improvements on the property described herein as well as required off site improvements in the manner set forth in this agreement:

C. Improvements required by County Department of Public Works shall be those described as Improvement Level 1 in Chapter 16.08.040, IMPROVEMENT REQUIREMENTS, of the Merced County Code. These improvements are generally described as:

1. Construct curbs, gutters, sidewalks and pavement widening along the entire Cardella Road, Yosemite Avenue and "G" Street frontage and construct curbs, gutters, sidewalks and new street paving for all streets to be constructed within the above described parcel of land in conformance with the Merced County Improvement Standards and Specifications.



2. Install streetlighting. Form, annex to, or include into a lighting maintenance zone of benefit.
3. Design and construct a storm drainage system. Form, annex to, or include into a drainage maintenance zone of benefit.
4. Provide a soils report in conformance with Section 16.08.040.C.

D. When the County Director of Public Works determines that the reasons for the deferment of the improvements no longer exist, he shall notify Owner in writing to commence their installation and construction within ninety (90) days after such written demand is made upon the Owner. The notice shall be mailed to the current owner or owners of the land as shown on the latest adopted county assessment roll. The notice shall describe the work to be done by owners, the time within which the work shall commence and the time within which the work shall be completed.

### III. PERFORMANCE OF THE WORK

Owner agrees to perform the work as set forth herein or as modified by the Board of Supervisors. Owner shall cause plans and specifications for the improvements to be prepared by competent persons legally qualified to do the work and submit said improvement plans and specifications for approval prior to commencement of the work described in the notice and to pay County inspection fees. The work shall be done in accordance with County Improvement Standards in effect at the time this agreement is executed. Owner agrees to commence and complete the work within the time specified in the notice give by the Director of Public Works and to notify the County at least 48 hours prior to start of work. In the event Owner fails to construct any improvements required under this agreement, County may, at its option, do the work and collect all the costs from Owner.

Permission to enter onto the property of Owner is granted to County or its contractor as may be necessary to construct such improvements. Where the County causes such work to be performed, the cost thereof shall constitute a special assessment against the property described herein which is benefitted by the improvement and shall become a lien on the land.

### IV. REVIEW OF REQUIREMENTS

If Owner disagrees with the requirements set forth in any notice to commence installation of improvements, he shall, within 30 days of the date the notice was mailed,

request a review of the requirements by the Board of Supervisors of the County. The decision of this Board shall be binding upon both County and Owner.

#### **V. BONDS**

Prior to approval of improvement plans by the County, Owner may be required to execute and deliver to the County a faithful performance bond and a labor and materials bond in an amount and form acceptable to County to be released by the Board of Supervisors in whole or in part upon completion of the work required and payment of all persons furnishing labor and materials in the performance of the work.

#### **VI. INSURANCE**

Owner shall maintain, or shall require any contractor engaged to perform the work to maintain, at all times during the performance of the work called for herein, a separate policy of insurance in a form and amount acceptable to the County.

#### **VII. INDEMNITY**

The Owner shall assume the defense and indemnify and save harmless the County, its officers, agents, and employees, from every expense, liability or payment by reason of injury "including death" to persons or damage to property suffered through any act or omission, including passive negligence or act of negligence, or both, or the Owner, his employees, agents, contractors, subcontractors, or anyone directly or indirectly employed by either of them, or arising in any way from the work called for by this agreement, on any part of the premises, or the performance or non-performance of the work. This provision shall not be deemed to require the Owner to indemnify the County against the liability for damage arising from the sole negligence or willful misconduct of the County or its agents, servants or independent contractors who are directly responsible to the County.

IN WITNESS WHEREOF, County has executed this agreement  
as of November 30, 1989.

COUNTY OF MERCED

Paul A. Fillebrown  
Paul A. Fillebrown  
Director of Public Works

IN WITNESS WHEREOF, Owner has executed this agreement as  
of Nov 28, 1989.

Spalding G. Wathen  
Spalding G. Wathen

Della Wathen  
Della Wathen

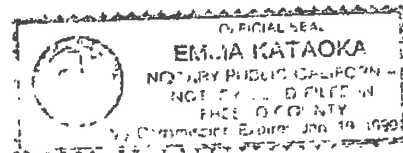
APPROVED AS TO LEGALITY AND FORM  
MERCED COUNTY COUNSEL

By: [Signature]  
Deputy

CHICAGO TITLE  
INDIVIDUAL  
Staple  
Staple

STATE OF CALIFORNIA  
COUNTY OF Fresno } SS  
On this 28th day of November, in the year  
1989, before me, the undersigned, a Notary Public in  
and for said County and State, personally appeared  
Spalding G. Wathen and  
Della Wathen  
personally known to me (or proved to me on the basis of satisfactory  
evidence) to be the persons whose names  
are subscribed to the within instrument and  
acknowledged that they executed the  
same

Signature *Emma Kataoka*  
Emma Kataoka  
Name (Typed or Printed)  
Notary Public in and for said County and State



F2492 R 6/84

FOR NOTARY SEAL OR STAMP

### GENERAL ACKNOWLEDGMENT

NO. 201

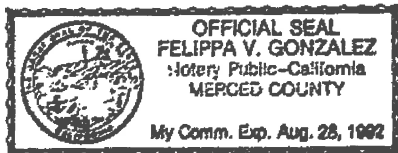
State of CALIFORNIA  
County of MERCED } SS.

On this the 30 day of NOVEMBER, 19 89, before me,

FELIPPA V. GONZALEZ  
the undersigned Notary Public, personally appeared

PAUL A. FILLEBROWN

☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence  
to be the person(s) whose name(s) IS subscribed to the  
within instrument, and acknowledged that HE executed it.  
WITNESS my hand and official seal.



Notary's Signature *Felippa V. Gonzalez*

770 122

NATIONAL NOTARY ASSOCIATION • 23012 Ventura Blvd. • P.O. Box 4825 • Woodland Hills, CA 91364

END OF DOCUMENT

VOL 2788 PAGE 558

**KENT B. CHRISTENSEN**  
Merced County Recorder4/22/2010  
11:16 AM  
RE04**RECORDING REQUESTED BY:**

TransCounty Title Company

**WHEN RECORDED MAIL TO:**City of Merced  
City Clerk's Office  
678 West 18th Street  
Merced, California 95340Order No. 10-00339-DMK  
Escrow No. 10-00339-DMK  
Parcel No. 231-040-006

P Public

T

Doc#: 2010-015023



Titles: 1 Pages: 6

Fees	29.00
Taxes	0.00
Other	0.00
PAID	\$29.00

(Above for Recorder's Use Only)

**PARTIAL TERMINATION OF AGREEMENT**

NOTICE IS HEREBY GIVEN that that certain Agreement (Deferment of Construction) between the County of Merced and Spaulding G. Wathen and Della Wathen recorded in the Official Records of the Office of the County Recorder on Merced County, State of California, on December 1, 1989 as Series No. 31271 in Book 2788 at Page 553 of the Official Records of said County, with respect to that certain real property located in said County and more particularly described as Exhibit "A" attached hereto, is hereby terminated.

Dated: 4-16-10DELLA WATHEN, Individually and  
as Trustee of the Spaulding G.  
Wathen Q-Tip TrustBy: Della Wathen  
Della Wathen

SUCCESSOR IN INTEREST:  
CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: William D. Cavill  
City Manager acting

ATTEST:  
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Ken Ryell 4/15/10  
City Attorney Date

201447  
ACCOUNT DATA:

BY: [Signature]  
Verified by Finance Officer

NO funds to encumber. MRS 4/21/10  
VR

ACKNOWLEDGEMENT

State of California

County of ~~Merced~~ Fresno

On April 16, 2010, before me, Judith A. Robinson, a  
Notary Public, personally appeared, Della Wathen

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.

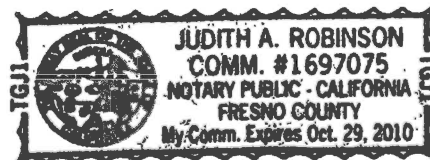
I certify under PENALTY OF PERJURY under the laws of the State of  
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Judith A. Robinson  
Notary Public

(seal)



## ACKNOWLEDGEMENT

State of California

County of Merced

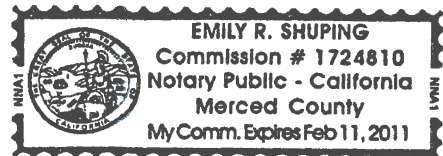
On April 21, 2010, before me, Emily R. Shuping, a  
Notary Public, personally appeared, William D. Cahill

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 Emily R. Shuping  
Notary Public



(seal)



January 28, 2010

W00209A

**EXHIBIT "A"**

**DESCRIPTION**

All that portion of Remainder D as shown on "Final Map for Mansionette Estates Unit 2", recorded in Volume 55 of Official Plats at pages 12, 13 and 14, Merced County Records, being more particularly described as follows:

**COMMENCING** at the northwest corner of said Remainder D;

Thence South  $00^{\circ}42'36''$  West, 283.54 feet along the west line of said Remainder D to **TRUE POINT OF BEGINNING**;

- (1) thence North  $89^{\circ}56'09''$  East, 612.97 feet parallel with the north line of said Remainder D to the east line of said Remainder D;
- (2) thence South  $00^{\circ}42'17''$  West, 352.11 feet along the said east line of Remainder D;
- (3) thence along a curve concave to the northwest through a central angle of  $89^{\circ}13'31''$ , having a radius of 15.00 feet, and whose long chord bears South  $45^{\circ}19'03''$  West, 21.07 feet to the south line of said Remainder D;
- (4) thence South  $89^{\circ}55'48''$  West, 583.00 feet along the said south line of Remainder D;
- (5) thence North  $44^{\circ}40'48''$  West, 21.36 feet along the southwest line of said Remainder D;
- (6) thence North  $00^{\circ}42'36''$  East, 351.77 feet along the west line of Remainder D to the **TRUE POINT OF BEGINNING**.

Containing 224747 square feet, more or less.



*David D. Heinrichs*  
1-28-2010

AVENUE

NIGHTINGALE COURT

21

20

19

18

17

16

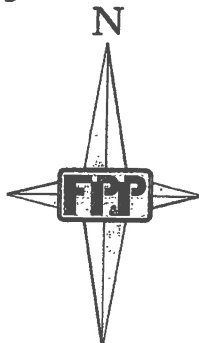
15

N89°56'09"E

NORTH LINE OF REMAINDER D

POINT OF COMMENCING  
N.W. CORNER OF REMAINDER D

REMAINDER D  
55 O.P. 12  
M.C.R.



SCALE 1" = 100'



*David D. Heinrich*

2-1-2010

S00°42'36"W 283.54'

SANDPIPER

N00°42'36"E 351.77'

32'

N44°40'48"W 21.36'

S89°55'48"W 583.00'

N89°56'09"E 612.97'

TRUE POINT OF BEGINNING

**PARCEL ACQUIRED BY CITY**  
224,747± SQUARE FEET

R=15.00  
L=23.36  
Tan=14.80  
Δ=89°13'31"

DRIVE

42'

MANSIONETTE

S00°42'17"W 352.11'

47'

Y O S E M I T E

A V E N U E

EXHIBIT "B"

BARBARA J LEVEY

02:54 PM

re03

Merced County Clerk - Recorder

VCC VitalCheck Counter

**RECORDING REQUESTED BY:**City of Merced, A California Charter  
Municipal CorporationDoc#: **2017027795**

Titles: 1 Pages: 10



Fees 42 00

Taxes 0.00

Other 0 00

PAID 42.00

\* \$ R 0 0 0 0 1 5 6 9 8 1 \$ \*

**WHEN RECORDED MAIL TO:**City of Merced  
City Clerk  
678 West 18<sup>th</sup> Street  
Merced, California 95340**Exempt Recording Per Gov't Code  
Section 6103**

(Above for Recorder's Use Only)

**PARTIAL TERMINATION OF AGREEMENT****(Deferment of Construction)**

This Partial Termination of Agreement is made this 21st day of August, 2017, by and between the City of Merced, a California Charter Municipal Corporation, (the "City"), the County of Merced, a Political Subdivision of the State of California, (the "County"), Shelley Cox, as the Executor of the Estate of Della Wathen, and Shelly Cox, Terri Lombardi, and Cindy Wathen as Successor Co-Trustees of the Spalding G. Wathen Q-Tip Trust (the "Owners"). The City, County, and Owners are collectively referred to herein as the "Parties."

**RECITALS**

WHEREAS, Owners are the legal owners of that certain storm drain basin identified in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Owners and the County entered into an Agreement for Deferment of Construction with respect to the Property on or about November 30, 1989, with said Agreement being recorded in the Official Records of Merced County as Document Number 31271 in Volume 2788 at Page 553 on December 1, 1989; and

WHEREAS the Property was subsequently annexed into the City of Merced; and

WHEREAS the Parties now desire to terminate the Agreement for Deferment of Construction as it relates to the Property such that it shall have no further force and effect.

NOW THEREFORE, for good and valuable consideration, the Parties hereby agree to the following:

1. Termination of Agreement for Deferment of Construction. The Agreement for Deferment of Construction, dated November 30, 1989, and recorded in the Official Records of the County of Merced as Document Number 31271 in Volume 2788 at Page 553 on December 1, 1989, is hereby terminated, cancelled, and is of no further force and effect as it relates to the Property.
2. Attorneys Fees. If any legal action or proceeding arising out of or relating to this Termination Agreement is brought by any Party, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.
3. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the above Property and/or Termination Agreement. Any prior agreements, promises, negotiations, or representations not expressly set forth herein are of no force and effect. Any amendment to this Termination Agreement shall be of no force and effect unless it is in writing and signed by the Parties.
4. Binding on Successors. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties.

IN WITNESS WHEREOF, the undersigned have executed this Partial Termination Agreement on the date(s) set forth below.

Date: 7/12/17

By Shelley Cox  
Shelley Cox,  
Executor of the Estate of  
Della Wathen, Owner

Date: 7/12/17

By Shelley Cox  
Shelley Cox,  
Co-Trustee of the Spalding G.  
Wathen Q-Tip Trust, Owner

Date: 7/12/17

By Terri Lombardi  
Terri Lombardi,  
Co-Trustee of the Spalding G.  
Wathen Q-Tip Trust, Owner

Date: 12 July 2017

By Cindy Wathen  
Cindy Wathen,  
Co-Trustee of the Spalding G.  
Wathen Q-Tip Trust, Owner

Date: 7-28-17

COUNTY OF MERCED

By D. S. Herfelder  
Dana S. Herfelder, P.E.  
Director of Public Works,  
County of Merced

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: Steven Carrigan  
City Manager  
STEVEN CARRIGAN

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: [Signature]  
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: [Signature] 6-27-17  
City Attorney Date

300417  
ACCOUNT DATA:

BY: [Signature]  
Verified by Finance Officer

No funds to encumber. all

8/8/17  
PL 8/8/17

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 Fresno

On July 12, 2017, 2017, before me, Virginia Badillo, Notary Public  
a Notary Public, Personally appeared Shelley Wathen Cox

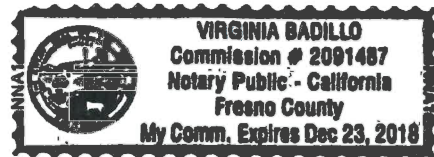
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument 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

Virginia Badillo  
Notary Public



(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 Fresno

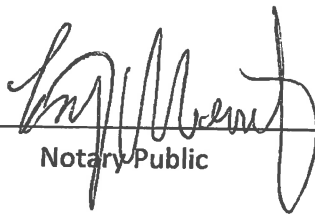
On July 12, 2017, before me, E. Weinberger  
a Notary Public, Personally appeared Terri Lombardi and  
Cindy Wathen

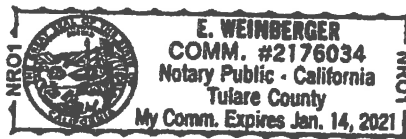
who proved to me on the basis of satisfactory evidence to be the person~~s~~ whose  
name~~s~~ ~~is~~/are subscribed to the within instrument and acknowledged to me that  
~~he~~/~~she~~/they executed the same in ~~his~~/~~her~~/their authorized capacity~~ies~~, and that by  
~~his~~/~~her~~/their signature~~s~~ 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

  
Notary Public



(seal)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

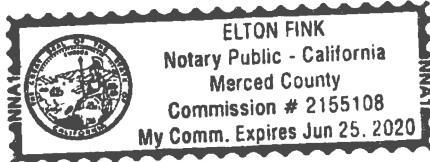
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
 County of Merced )  
 On July 28, 2017 before me, Elton Fink, Notary Public,  
 Date Here Insert Name and Title of the Officer  
 personally appeared Dana S. Harkide  
 Name(s) of Signer(s)

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 [Signature]  
 Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Partial termination of agreement Document Date: July 28, 2017  
 Number of Pages: 4 Signer(s) Other Than Named Above: Shelly Cox, Terri Lonsky, Cindy Warren

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: <u>Dana S. Harkide</u>	Signer's Name: _____
<input type="checkbox"/> Corporate Officer — Title(s): _____	<input type="checkbox"/> Corporate Officer — Title(s): _____
<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General	<input type="checkbox"/> Partner — <input type="checkbox"/> Limited <input type="checkbox"/> General
<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact	<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact
<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator	<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
Signer Is Representing: <u>(owner of more)</u>	Signer Is Representing: _____

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 Merced

On August 22, 2017, before me, Dawn Mendonca,  
a Notary Public, Personally appeared STEVEN CARRIGAN

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 Dawn Mendonca  
Notary Public



(seal)

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**FOR**  
**STORM DRAIN BASIN**

All that portion of Remainder D as shown on "Final Map for Mansionette Estates Unit 2", recorded in Volume 55 of Official Plats at Pages 12, 13 and 14, Merced County Records, lying in Section 8, Township 7 South, Range 14 East, Mount Diablo Meridian, in City of Merced, County of Merced, State of California, being more particularly described as follows:

**COMMENCING** at the northwest corner of said Remainder D; thence South 00° 42' 36" West, 246.40 feet along the west line of said Remainder D to the northwest corner of Road Dedication Grant Deed to the City of Merced Dated April 22, 2010, Doc# 2010-015018, Merced County Records, thence South 44° 40' 38" East, 7.21 feet along the north line of said Deed; thence North 89° 56' 09" East, 121.66 feet along the North line of said Deed to the **TRUE POINT OF BEGINNING**;

Thence North 00° 03' 51" West, 251.51 feet to the north line of said Remainder D;  
Thence North 89° 56' 09" East, 480.40 feet along the north line of said Remainder D to a non-tangent curve being the northeast corner of said Remainder D;  
Thence along said curve with a radial bearing of North 83° 05' 18" East concave to the east through a central angle of 1° 58' 03" having a radius of 537.00 feet and an arc length of 18.44 feet to a reverse curve;  
Thence along said curve concave to the west through a central angle of 9° 35' 20" having a radius of 458.00 feet and an arc length of 76.61 feet;  
Thence South 00° 42' 17" West, 156.02 feet along the east line of said Remainder D to the northeast corner of said Deed;  
Thence South 45° 19' 13" West, 1.30 feet along the north line of said Deed;  
Thence South 89° 56' 09" West, 485.26 feet along the north line of said Deed to the **TRUE POINT OF BEGINNING**.

Containing 2.81 acres, more or less.

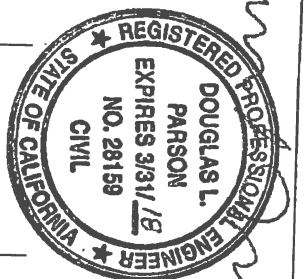


**EXHIBIT A**



SCALE 1" = 80'

# EXHIBIT "B"



J.N. X130404  
01-04-17

SANDPIPER AVENUE

NORTHWEST CORNER OF REMAINDER D

32' S0°42'36"W 246.40'  
32' S44°40'38"E 7.21'  
N89°56'09"E 121.66'  
N0°03'51"W 251.51'

REMAINDER D  
55 O.P. 12

TRUE POINT OF BEGINNING

ROAD DEDICATION  
DOC# 2010-015018 M.C.R.

485.26'  
S89°56'09"W

S45°19'13"W

1.30'

Δ = 01°58'03"  
R = 537.00'  
L = 18.44'  
Δ = 09°35'20"  
R = 458.00'  
L = 76.61'

S0°42'17"W 156.02'

MANSIONETTE DRIVE

RADIAL  
N83°05'18"