

RESOLUTION NO. 2020-_____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
APPROVING THE 1st AMENDED AND RESTATED
LEGISLATIVE ACTION AGREEMENT WITH
YOSEMITE AND G, LLC**

WHEREAS, the City approved General Plan Amendment #19-03 and Site Utilization Plan Revision #3 to Planned Development #72 for the Yosemite Crossing Development on January 6, 2020; and,

WHEREAS, the Planning Commission of the City of Merced held a noticed public hearing on September 9, 2020, at which time all those interested in the matter were provided the opportunity to speak or provide written or oral testimony regarding the application; and,

WHEREAS, after hearing all of the evidence and testimony, the Planning Commission adopted Resolution #4046 attached hereto as Exhibit "C," and incorporated herein by reference, recommending that the City Council approve the Amendment to the Legislative Action Agreement and approving Vesting Tentative Subdivision Map #1314, subject to Conditions; and,

WHEREAS, the City Council held a noticed public hearing on October 19, 2020, at which time all those interested in the matter were provided the opportunity to speak or to provide written or oral testimony regarding the application.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. Based upon the evidence and testimony in the record at the City Council public hearing, the City Council, exercising its independent judgment and review, hereby approves and adopts the 1st Amended and Restated Legislative Action Agreement with Yosemite & G, LLC., superseding and replacing in their entirety prior agreements and conditions relating to the property referenced therein.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 202_, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

Mayor

ATTEST:
STEPHANIE R. DIETZ, INTERIM CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Priscilla A. Norton 10-15-2020
City Attorney Date

CITY OF MERCED
Planning Commission

Resolution #4046

WHEREAS, the Merced City Planning Commission at its regular meeting (held via teleconference) of September 9, 2020, held a public hearing and considered **Vesting Tentative Subdivision Map #1314**, and **Amendment to the Legislative Action Agreement**, initiated by Yosemite and G, LLC., property owners. The application involves a request to allow the subdivision of approximately 21.5 acres into 17 lots, generally located at the northeast corner of Yosemite Avenue and G Street. The property is within Planned Development #72 and has a General Plan designation of Neighborhood Commercial (CN); also known as Assessor's Parcel Number (APN) 231-040-004 and APN 231-040-005.

WHEREAS, the Merced City Planning Commission concurs with Findings/Considerations A through J of Staff Report #20-451 (Exhibit B); and,

WHEREAS, the Merced City Planning Commission concurs with the Findings for Tentative Subdivision Map Requirements in Merced Code Section 18.16.80, 18.16.90, and 18.16.100 as outlined in Exhibit B; and,

NOW THEREFORE, after reviewing the City's Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby find that the previous environmental review (Initial Study #19-28 for General Plan Amendment #19-03 and Site Utilization Plan Revision #3 to Planned Development #72) remains sufficient and no further documentation is required (CEQA Section 15162 Findings), and recommend to the Merced City Council the approval of Amendment to the Legislative Action Agreement, and approve Vesting Tentative Subdivision Map #1314, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference, and contingent upon the approval by City Council of Amendment to the Legislative Action Agreement.

Upon motion by Commissioner DYLINA, seconded by Commissioner WHITE, and carried by the following vote:

AYES: Commissioners Delgadillo, Dylina, White, and Chairperson Harris
NOES: None
ABSENT: Commissioners Butticci and Camper (one vacancy)
ABSTAIN: None

EXHIBIT C

PLANNING COMMISSION RESOLUTION #4046

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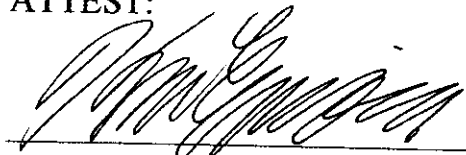
September 9, 2020

Adopted this 9th day of September 2020

Michael Harris

Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Exhibits:

Exhibit A – Conditions of Approval

Exhibit B – Findings/Considerations

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Conditions of Approval
Planning Commission Resolution #4046
Vesting Tentative Subdivision Map #1314

Note: The Conditions of Approval are based on Planning Commission Resolution # 4034 for General Plan Amendment #19-03 and Site Utilization Plan #3 to Planned Development (PD) #72 (“Prior Conditions of Approval”); Changes to such Prior Conditions of Approval are indicated by Strike Through (Deletions) and Bold Underline (Additions). It is the parties’ intention that the Conditions of Approval attached hereto shall supersede and replace in their entirety the Prior Conditions of Approval.

1. The proposed General Plan Amendment and SUP Revision shall be constructed/designed in substantial compliance with the Site Plan, Rendering, and Typical Elevations and Floor Plans (Attachments D, E, and F of Planning Commission Staff Report #19-29), 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 applicable conditions set forth in Resolution #2974 for General Plan Amendment #10-02 and Zone Change #410 previously approved for this site, **except as amended by these conditions.**
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. 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.

7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

8. De-annexation from the existing Maintenance District and Annexation to Community Facilities District (CFD) #2003-2 is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, streetlights, parks and open space. CFD procedures shall be completed prior to any final map approvals or issuance of any building permits, whichever comes first. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

9. The project shall comply with all mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #19-28 (Attachment H of Planning Commission Staff Report #19-29) and all applicable mitigation measures outlined in the Mitigation Monitoring Program for Initial Study #10-06 (Appendix C of Initial Study #19-28, Attachment G of Staff Report #19-29).

10. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
11. All signs shall comply with the **Master Sign Program approved as a part of Conditional Use Permit #1241, approved by the Merced Planning Commission on May 20, 2020, and with the** North Merced Sign Ordinance and Section 20.62.040 (B)(2) of the City's Zoning Ordinance for signs in a Neighborhood Commercial (C-N) zone.
12. The applicant shall construct all missing improvements along the property frontage on Yosemite Avenue and G Street including, but not limited to, sidewalk, curb, gutter, street lights, and street trees.
13. All necessary right-of-way along the property frontage, including Yosemite Avenue, G Street, and Sandpiper Avenue needed for public improvements shall be dedicated prior to the issuance of the first building permit or recordation of a parcel map, whichever comes first.
14. Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
15. Parking lot trees shall be installed per City Parking Lot Landscape Standards and Section 20.38.070 (F). At a minimum, parking lot trees shall be provided at a ratio of one tree for every six parking spaces. 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).
16. All projects on this site shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System). **Applicant may fulfill this requirement by contributing its "Fair Share" to the CFD of the cost for treatment facilities that will treat the stormwater generated by the entire service area. Applicant's "Fair Share" will be based on the applicant's percentage of discharge within the service area.**
17. Prior to issuance of the first grading/building permit for any project on the site, the applicant shall demonstrate compliance with San Joaquin Valley Air Pollution Control District Rule 9510 to the Planning Department. Changes to the site plan resulting from compliance with Rule 9510 are subject to review by City Staff or the Planning Commission, as determined by the Director of Development Services.

18. Bicycle parking for all projects on the site shall meet the minimum requirements of the California Green Building Code and Merced Municipal Code Section 20.38.080.
19. All landscaping on the site shall be in compliance with the City's Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City's Zoning Ordinance Section 20.36 – Landscaping.
20. Irrigation for all onsite landscaping shall be provided by a low-volume system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or city-mandated water regulations dealing with the current drought conditions.
21. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
22. For buildings over 30 feet tall, a minimum 26-foot-wide drive aisle shall be provided for emergency vehicle access. The developer shall work with the Fire Department to determine the areas that need the 26-foot-wide drive aisle. An emergency access lane made of an all-weather surface shall be constructed to the south of the southernmost multi-family building. This lane shall either be able to meet the turnaround needs of emergency vehicles if it is 150 feet long or more, or it shall be less than 149 feet long but still meet the needs of emergency access for the residential building. In the event that the southernmost residential building is 30 feet tall or less, this path shall be a minimum of 22 feet wide. If the southernmost residential building is more than 30 feet tall, the path shall be a minimum of 26 feet wide. These details shall be confirmed as acceptable by the Fire Chief or designee prior to the issuance of occupancy permits for any of the multi-family residential buildings.
23. A fire control room may be required for the buildings on the site. The applicant shall work with the Fire Department to determine the location of the fire control room. Additional fire control rooms may be required at the discretion of the Fire Chief.
24. Each building shall be provided with a Fire Department Connection, **if fire sprinklers are required.**
25. Buildings that do not provide an elevator (other than a freight elevator) shall be provided with an additional exit. The developer shall work with the Chief

Building Official to determine the number of exits required for each building.

26. A minimum turning radius of 33 feet inside, curb-to-curb, and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.

27. All storm water shall be either (a) retained onsite and metered out to the City's storm water system or (b) directed to the basin immediately to the east of the project site in accordance with City Standards, subject to a storm drain plan approved by the City Engineer. The applicant shall submit calculations to the City showing, to the satisfaction of the City Engineer or designee, that the basin to the east of the project site has enough capacity for the proposed plans.

28. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.

29. All parking lot and other exterior lighting shall be oriented in such a way so that it does not spill over onto adjacent properties.

30. Containers for refuse and recycled goods shall be stored in enclosures that are designed with colors compatible with the buildings and shall be constructed to meet City Standards. At the Building Permit stage, the developer shall work with the City Refuse Department to determine the best location for these enclosures to ensure proper access is provided for City Refuse Trucks as well as the number of containers needed to adequately serve the site. Use of a trash compactor should be considered to reduce the number of pick-ups per week.

31. All construction activity shall be conducted between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday.

32. All walking paths, bicycle and vehicle parking areas, and recreational areas shall be provided with sufficient lighting to ensure a safe environment.

33. All mechanical equipment shall be screened from public view.

34. Instead of the typical requirements for additional Conditional Use Permits and Site Plan Review for interface, this Site Utilization Plan process will address interface regulations, additional review, and permissibility of specific uses in Planned Development #72. These modifications apply in the portions of Planned Development #72 covered by the subject site parcels (Assessor's Parcel Number 231-040-004 and 231-040-005) in the following manner, taking into consideration that the adjacency of parcels may change in the event of parcel modifications in the future:

- a. Multi-family housing will require a Site Plan Review Permit rather than a Conditional Use Permit, and if on a parcel abutting or across from (per the definitions in Section 20.32.020 of the Zoning Ordinance) a property with R-1 zoning, will require a publicly noticed public hearing at the Site Plan Review meeting per Section 20.32 of the Zoning Ordinance; and,
 - b. The hotel, rather than being “use not allowed”, shall require a Site Plan Review Permit rather than a Conditional Use Permit, and if on a parcel abutting or across from (per the definitions in Section 20.32.020 of the Zoning Ordinance) a property with R-1 zoning, will require a publicly noticed public hearing at Site Plan Review meeting per Section 20.32 of the Zoning Ordinance, but will not require an additional Conditional Use Permit; and,
 - c. Restaurants selling alcohol for consumption on-site will require only a Site Plan Review Permit use without further requirement for a Conditional Use Permit or public hearing for interface considerations; and,
 - d. Gas and service stations will require only a Site Plan Review Permit without further requirement for a Conditional Use Permit unless the gas and service station wishes to sell alcohol, in which case a Conditional Use Permit is required, and a letter of Public Convenience and Necessity may be required, but an additional public hearing for interface consideration is not required; and,
 - e. Day care centers require only a Site Plan Review Permit without further requirement for a Minor Use Permit or public hearing for interface considerations; and,
 - f. Drive-through and drive-up sales require only a Site Plan Review Permit without further requirement for a Conditional Use Permit or public hearing for interface considerations; and,
 - g. General retail uses, professional offices, restaurants, and banks require only a Site Plan Review Permit without further requirement for a public hearing for interface considerations.
35. The traffic signal at G Street and Project Driveway 1, north of the proposed hotel, shall be connected into the City’s street synchronization system to the satisfaction of the City Engineer or designee.
- ~~36. Sandpiper Drive, at a minimum, shall be constructed from Yosemite Avenue north to “Children’s Avenue”. Upon completion of the traffic signal at G Street and Project Driveway 1, north of the proposed hotel, Sandpiper Drive shall be constructed to Project Driveway 1. Prior to the issuance of any occupancy permit for any of the multi-family residential buildings, the two office buildings at the northern portion of the project site, or the hotel, Sandpiper Drive shall be constructed in its~~

~~entirety to connect to Mercey Avenue.~~

36. The following improvements depicted on the Vesting Tentative Map shall be constructed by the applicant consistent with the phasing shown on page 3 of the Vesting Tentative Map attached as Exhibit "B":

Phase 1: The G Street frontage for Phase 1 and Sandpiper Avenue up to the north line of the driveway of Phase 1.

Phase 2: Sandpiper Avenue from the driveway of Phase 1 to the north property line of Phase 2.

Phase 3: G Street frontage north of the traffic signal, the traffic signal itself, the interior private road between Phase 3 and Phase 4, and Sandpiper Avenue up to the north line of the interior private road.

Phase 4: The remaining frontage on G Street, the remaining portion of Sandpiper Avenue to the end of the north property line of Phase 4.

If development occurs out of sequence, the foregoing improvements must be constructed.

37. Safe pedestrian access from the multi-family residential portion of the project to the commercial portions of the site shall be provided.

38. In the event that the parcels of the subject site are ever subdivided or modified, in the manner suggested by the site plan or otherwise, cross-access and use agreements shall be put into place such that parking for all uses meets or exceeds City standards.

39. The entire development should be designed with a similar or complimentary aesthetic to the renderings shown at Attachment F of Planning Commission Staff Report #19-29.

40. For any illuminated signs placed above the ground floor, all illumination shall be located and directed in such a manner that light does not spill over to the east or north. Prior to installation, illuminated signs shall be approved by the Planning Manager or designee, and may require an analysis of lumens or other measurements of illumination as deemed necessary. Monument signs are not subject to this condition.

Findings and Considerations
Planning Commission Resolution #4046
Vesting Tentative Subdivision Map #1314

FINDINGS/CONSIDERATIONS:

General Plan Compliance and Policies Related to This Application

- A) The proposed Vesting Tentative Subdivision Map (VTSM) conforms with the General Plan designation of Neighborhood Commercial (CN) and zoning of Planned Development (P-D) #72. The VTSM carries forward the project approved on January 21, 2020: General Plan Amendment (GPA) #19-03 and Site Utilization Plan (SUP) Revision #3 to Planned Development #72.

The SUP Revision included changes to a number of aspects of Planned Development #72, including a four-story, 128-room hotel of approximately 80,104 square feet, and two medical office buildings totaling approximately 66,465 square feet. It also included 44 Units of Multi-Family Residential Housing totaling approximately 29,887 square feet, fast food uses with drive-through windows totaling approximately 5,494 square feet, and a mixed-use development with approximately 59,616 square feet of other retail and office uses.

Traffic/Circulation

- B) The project site is located at the northeast corner of Yosemite Avenue and G Street. The VTSM introduces minor changes to the layout of the project that should not cause significant variation in the traffic analysis prepared for the GPA and SUP Revision. The off-site improvements necessitated by this project, including improvements to G Street and the extension of Sandpiper Avenue, have timing requirements based on the new phasing plan for the project (Condition #36 of Exhibit A of Planning Commission Resolution #4046).

Parking

- C) Parking for the site is altered slightly by the changes in site layout introduced by the VTSM. Staff believes that, with proper cross-access and use agreements in place, the changes still meet and exceed the parking needs for the proposed uses.

Public Improvements/City Services

- D) Water

There is a 16-inch water line in Yosemite Avenue and another 16-inch line in G Street to serve the project site. The City's water supply would be sufficient to serve the proposed project.

Sewer

An 18-inch sewer line exists in Yosemite Avenue which flows to G Street, then continues out to the Waste Water Treatment Plant (WWTP). The G Street sewer line is 27 inches

wide at the project location. There is sufficient capacity at the WWTP, and the existing lines in Yosemite Avenue and G Street have enough capacity during peak hours to accommodate the additional wastewater and transmit it to the WWTP for processing.

Stormwater

A 24-inch storm drain exists in G Street. The project would be required to retain storm water onsite or in the collection basin to the east of the site that is part of P-D #72, and meter it into the City's system. If the project's stormwater conveyance system traverses the Merced Irrigation District's Sells Lateral located just south of Cottonwood Creek, an appropriate "Crossing Agreement" must be executed.

Site Design

- E) The project site is bounded by Yosemite Avenue to the south, G Street to the west, the future extension of Sandpiper Avenue to the east, and approximately a hypothetical extension of University Avenue or Bobolink Court to the north. For clarity, Sandpiper Avenue is projected to extend between Yosemite Avenue and Mercy Drive during the lifespan of this project, while neither Yosemite Avenue nor Bobolink Court have such projections and are mentioned for the purpose of illustration only.

As proposed, the project site is divided into 17 lots. These lots are divided into phases as follows:

- Phase 1: Retail, Bank, Restaurant, Fast Food, Gas Station and Convenience Mart
 - Lots 1, 2, 3, 4, 9, and 10
- Phase 2: Office, Restaurant
 - Lots 5, 6, 7, 8, 11, and 12
- Phase 3: Hotel and Multi-Family Residential
 - Lots 13, 14, and 15
- Phase 4: Medical Office
 - Lots 16 and 17

Staff believes that this phasing plan represents a sensible path for the project to follow, starting with the likely fastest-developing parcels near the corner of Yosemite Avenue and G Street and expanding into the property over time, capturing different segments as it expands. Allowing the site to add retail uses and other attractive businesses prior to introducing the multi-family housing element also makes the site more appealing to potential residents and by adding residents creates on-site demand for additional services, which is valuable to both businesses and residents alike.

Neighborhood Impact/Interface

- F) As previously described, the project site is bordered on the east by residential uses, as well as Merced College to the west across G Street. The VTSM does not propose to modify the uses approved in the GPA and SUP Revision.

Public hearing notices were sent to all property owners within 300 feet of the site. To date, staff has not received any comments.

Tentative Subdivision Map Requirements

- G) Per Merced Municipal Code (MMC) Section 18.16.080 – Information Required, a tentative subdivision map shall include all of the requirements shown at Attachment 6 of Staff Report 20-451. Said requirements include stating the location of the subject site, the name of the subdivision, and showing the layout of the proposed lots. MMC 18.16.090 – Required Statement requires the applicant to provide a statement that explicitly states any deviations from tentative subdivision map requirements, standard drawings, or Zoning laws. In this case, the applicant is not requesting any deviations from City requirements. MMC 18.16.100 - Public Hearing – Generally, requires a public hearing to review and approve a tentative subdivision map in conformance with the Subdivision Map Act. Per the California Environmental Quality Act a public hearing notice was mailed to property owners within 300 feet of the subject site and published in a qualifying newspaper, Merced County Times, three weeks prior to this meeting. In addition, staff reached out to local utility companies, local school districts, and other relevant government agencies to solicit comments. Staff did not receive any comments regarding this application.

Signage

- H) All signs on the site would be required to comply with the approved Master Sign Plan, the North Merced Sign Ordinance and the Neighborhood Commercial sign regulations (Condition #11), as well as Condition #40 dealing with illumination. Final sign/design details will be addressed by staff at the Site Plan Review phase.

Environmental Clearance

- I) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and concluded that Environmental Review #20-13 is a second tier environmental document, based upon the City's determination that the proposed development remains consistent with the previously adopted Initial Study #19-28 and provisions of CEQA Guidelines, Section 15162 (previous environmental review for General Plan Amendment #19-03 and Site Utilization Plan SUP Revision #3 to Planned Development #72). A copy of the Section 15162 Findings can be found at Attachment 4 of Planning Commission Staff Report #20-451.

Legislative Action Agreement

- J) For the Vesting Tentative Subdivision Map to proceed, an amendment to the existing agreement is necessary in order to both meet the infrastructure needs of the City of Merced and the viability of the site to the developer. The most recent agreement references previous agreements that have several outdated, contradictory, or infeasible requirements, schedules, and terms. The amendment removes these issues, adds a new phasing requirement tying the off-site improvements required to the phased development of the parcels, and generally removes unnecessary language that the developer believes has the potential to deter potential tenants from locating on the subject site. The amendment proposes to unify all conditions in this single agreement, superseding all previous agreements.