MCFARLAND PLANNING COMMISSION

Special Meeting Notice and Agenda

Council Chambers
103 W. Sherwood Ave, Mcfarland, CA
Website: https://www.mcfarlandcity.org/

Tuesday, December 12, 2023
6:00 PM

MARCO MARTINEZ, Chairman
JOSE HERNANDEZ JR., *Vice Chairman*
JOSE "JAY" HERNANDEZ, Commissioner
LUIS SARABIA, *Commissioner*
JIM WHITE, *Commissioner*

HOW TO SUBMIT PUBLIC COMMENTS: The meetings of the Planning Commission and all municipal entities, commissions, and boards ("the City") are open to the public. At regularly scheduled meetings, members of the public may address the city on any item listed on the agenda, or on any non-listed matter over which the city has jurisdiction. At special or emergency meetings, members of the public may only address the city on items listed on the agenda.

There is a time limitation of two minutes per person. For any item that is not on the agenda and within the jurisdiction or interest of the city, please come to the podium at this time. The Brown Act does not permit any action or discussion on items not listed on the agenda. If you wish to speak regarding a scheduled agenda item, please come to the podium when the item number and subject matter are announced, and the Chairman opens Public Comment on the item. When recognized, please begin by providing your name and address for the record (optional). Anyone wishing to submit written information at the meeting needs to furnish ten (10) copies to the City Clerk in advance to allow for distribution to Planning Commission, staff, and the media. Willful disruption of the meeting shall not be permitted. If the Chairman finds that there is in fact willful disruption of any Planning Commission Meeting, he/she may order the disrupting parties out of the room and subsequently conduct the Commission's business without them present.

PUBLIC ACCOMMODATIONS: The City of McFarland does not discriminate based on disability and complies with the provisions of the Americans with Disabilities Act (ADA). If you need special assistance to participate in this meeting, please contact the City Clerk's Office at (661) 792-3091 at least 48 hours prior to the meeting to make reasonable arrangements to ensure accessibility to this meeting.

INTERPRETATION: If you need an interpretation of your communications to the City Council from Spanish into English, please contact the City Clerk Department at 661-792-3091 ext 2135 or via email at falvarado@mcfarlandcity.org. Subject to availability, notifying at least 48 hours before will usually enable the City to make arrangements.

CALL TO ORDER: Chairman Marco Martinez

ROLL CALL:
Chairman, Marco Martinez
Vice Chairman, Jose Hernandez Jr.
Commissioner, Jose “Jay” Hernandez
Commissioner, Luis Sarabia
Commissioner, Jim White

PLEDGE OF ALLEGIANCE

INVOCATION:

PRESENTATIONS

PUBLIC COMMENT: At regularly scheduled meetings, members of the public may address the city on any item listed on the agenda, or on any non-listed matter over which the city has jurisdiction. Commissioners may respond briefly to statements made or questions posed. They may ask a question for clarification; may refer the item to staff for further study or for placement on a future agenda. Speakers are limited to two minutes for each person. Please state your name and address for the record prior to making a presentation. Fifteen minutes total will be allowed for any one subject.

CONSENT AGENDA: The Consent Agenda consists of items that in staff’s opinion are routine and non-controversial. These items are approved in one motion unless the Planning Commission removes a particular item.

1. Planning Commission Minutes - Special Meeting- September 6, 2023.

PUBLIC HEARINGS

2. Accessory Dwelling Units – Zoning Code Amendment

Conduct a Public Hearing and consider adoption of Resolution No 0005-2023 recommending that the City Council approve proposed code amendments amending Chapter 17.16.060 and Chapter 17.136.150 and accept Notice of Exemption pursuant to CEQA Guidelines.

3. Development Agreement – OTC McFarland, LLC

Conduct a Public Hearing and consider adoption of Resolution No. 0006-2023 recommending that the City Council approve proposed Development Agreement with OTC McFarland LLC pursuant to Chapter 19.04 of the Municipal Code.

PLANNING DISCUSSION ITEMS

4. DEPARTMENT REQUESTS (Non-Public Hearing Items)

Planning Commission Schedule 2024 (Information Item – No Action)

5. DIRECTOR’S REPORT

Community Development Department Updates

COMMISSIONER COMMENTS:
On their own initiative, commission members may make an announcement or a report on their own activities. they may ask a question for clarification, make referral to staff, or take action to have staff place a matter of business on a future agenda (government code section 54954.2(a)).

ADJOURNMENT

This is to certify this agenda was posted at McFarland City Hall on DECEMBER 07, 2023.

Francisca Alvarado
FRANCISCA ALVARADO, CITY CLERK

The Next Regular Planning Commission Meeting: JANUARY 16, 2023.

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All agenda item and/or supporting documentation are available for public review on the city website at www.mcfarlandcity.org and the office of the City Clerk of the City of McFarland, at 401 W, Kern Ave. McFarland, CA 93250 during regular business hours of 8:00 am – 5:00 pm Monday through Friday, following the posting of the agenda. Any supporting documentation related to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location and available at the meeting.

CITY OF MCFARLAND
PLANNING COMMISSION
Special Meeting – September 6, 2023
MINUTES

CALL TO ORDER: Chairman Martinez called the meeting to order at 6:00 p.m.

ROLL CALL: Commissioners Present: M. Martinez, J. Hernandez Jr., J. White, L. Sarabia
Commissioners Absent: J. (Jay) Hernandez

STAFF PRESENT: Community Development Director Saldana, Senior Planner De Leon

PLEDGE OF ALLEGIANCE: Vice Chairman J. Hernandez Jr.

INVOCATION: Chairman Martinez.

INTERPRETATION: Statement read by Chairman Martinez.

PRESENTATIONS: None

PUBLIC COMMENTS: Chairman opened public comment at 6:03 p.m. There being no public comments, the Chairman closed public comment at 6:03 p.m.

CONSENT AGENDA: None

PUBLIC HEARINGS

1. Initial Study and Negative Declaration; General Plan Amendment (GPA 2023-01) and Pre-Zoning Ordinance for Annexation 19. Staff Report was provided by Senior Planner DeLeon. Senior Planner DeLeon advised the Commission of corrections to the staff report, correcting the acreage and the requested action to recommend approval of a negative declaration rather than mitigated negative declaration.

   Chairman Martinez opened the public hearing at 6:08. Commissioners asked question of applicant regarding potential commercial uses. Mr. Mendrin provided response as representative of the applicant. Director Saldana provided responses related to water service. There being no further public comments, the Chairman closed the public hearing at 6:10 p.m.

   Chairman Martinez moved to adopt RESOLUTION NO. 2023-0004 PC A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MCFARLAND RECOMMENDING CITY COUNCIL APPROVE NEGATIVE DECLARATION, GENERAL PLAN AMENDMENT (GPA 2023-01) AND PRE-ZONING FOR ANNEXATION #19 as amended. Motion was seconded by Commissioner Sarabia and carried by unanimous vote.

PLANNING DISCUSSION ITEMS: Director Saldana noted that there would be no regular meeting in September due to staff attending the California Chapter of the American Planning Association Conference.

COMMISSIONER COMMENTS

Commissioner White inquired about the water well grant received by the City. Director Saldana responded that the final grant application process is proceeding and will be completed within the next couple of weeks.

Commissioner Sarabia inquired about a gas station on the east side of 99. Mr. Mendrin who is developing commercial property on Sherwood responded to question indicating that there are plans moving forward with a gas station development on Sherwood.

Vice Chairman Hernandez asked for an update on the community garden. Senior Planner DeLeon provided an update.

ADJOURNMENT: There being no further business before the Commission, Chairman Martinez adjourned the meeting at 6:15.

Paul M. Saldana

Paul M. Saldana
Community Development Director
Planning Commission Secretary

City of McFarland

Planning Commission Meeting
STAFF REPORT

Agenda Item No. 2.
Section: PUBLIC HEARINGS
Meeting Date: December 12, 2023

TO: Honorable Mayor and Council Members

FROM: Paul Saldaña , Community Development Director

SUBJECT: Accessory Dwelling Units – Zoning Code Amendment

Conduct a Public Hearing and consider adoption of Resolution No 0005-2023 recommending that the City Council approve proposed code amendments amending Chapter 17.16.060 and Chapter 17.136.150 and accept Notice of Exemption pursuant to CEQA Guidelines.

SUMMARY:

FINANCIAL IMPACT:

RECOMMENDATION:

ATTACHMENTS:

1. City_ of_ McFarland_Zoning Ordinance Amendment

PLANNING COMMISSION STAFF REPORT
October 17, 2023

TO:	Chair and Planning Commissioners
FROM:	Paul Saldana Community Development Director
DATE:	October 17, 2023

Agenda Item	
Presentation	
Departmental Reports	
Consent Agenda	
Public Hearings	X
Discussion Items	
Other	
Action Requested	
Ordinance	X
Resolution	X
Motion	
None	

PROJECT DESCRIPTION: Zoning Ordinance Amendment – Accessory Dwelling Units

ENVIRONMENTAL DOCUMENT: Notice of Exemption

APPLICANT: City of McFarland

SECTION: Sections 17.16.060 and 17.136.150 of Title 17 Zoning

STAFF RECOMMENDATION

The staff recommends the Planning Commission consider and adopt Resolution 2023-0004 of the Planning Commission of the City of McFarland recommending the City Council adopt the Ordinance amending Title 17 of the McFarland Municipal Code related to Additional Dwelling Units and Accept California Environmental Quality Act (CEQA) A Notice of Exemption.

BACKGROUND

The City of McFarland adopted Section 17.136.150 Additional Dwelling Units in 1969. This section permitted additional dwelling units in the R-1 residential zones upon the Planning Commission approving a Conditional Use Permit and complying with various other requirements. State law now requires all cities and counties to permit by right accessory dwelling units and junior accessory dwelling units in all zones that permit residential uses.

Upon adoption of the ADU ordinance by the City Council, Staff will forward the adopted ordinance to the State California Department of Housing and Community Development (HCD) for its comments which may require additional changes. The staff at HCD have 60 days in which to complete their review of the adopted ordinance and provide comments as to the adequacy of the adopted ordinance. If comments are received, the ordinance will need to be further amended to address any changes. If HCD finds that any adopted ordinance enacted by a local jurisdiction is in any way inconsistent with state law, the ordinance is void. If this occurs, the ADU ordinance will require amending.

DISCUSSION

The attached Accessory Dwelling Unit Handbook published by the California Department of Housing and Community Development- Updated July 2022 provides a comprehensive review of the state legislation and HCD's interpretation. The handbook contains a section relating to questions and answers for use by local government and residents. It also contains legislative mandates requiring cities and counties to abide by in the implementation of the state laws. The following definitions provide a general overview of the Accessory Dwelling Unit legislation.

Structure: Accessory Dwelling Unit (ADU) is accessory to a primary residence and has complete independent living facilities for one or more persons and has a few variations: Detached – the unit is separated from the primary structure; Attached – the unit is attached to the primary structure; Converted Existing Space – Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.

Junior ADUs: We are required to allow these smaller ADUs, only in single-family homes, and less than 500 square feet of existing space.

Separate sale of JADUs: Government Code Section 65852.26 was added which allows, under certain circumstances, the separate sale of a JADU when the property is constructed and owned by a 501(c)(3) nonprofit. The JADU must, among other requirements, remain affordable for a minimum of 45 years, and the owner of the single-family home must reside within the home.

Fees:

Processing Fee: An ADU or JADU can only be charged for the cost of processing a new single-family dwelling (SFD). Impact/development fees can only be charged if the ADU is greater than 750 square feet. The fee must be prorated based on fees for the SFD.

Lot size: The state has removed any requirement for a minimum lot size.

Number of ADUs: Any lot where an ADU is permitted may have one ADU and one JADU. In situations where multi-family units exist, two detached ADUs are permitted plus additional units up to 25 percent of the existing unit total. These units can be constructed within existing unit space, subject to limitations. No JADUs are permitted in multi-family units.

Setbacks, Size and Height: A detached ADU can now have side and rear setbacks of just four feet, and the height of the building can be up to 16 feet. In McFarland's code, the height of the ADU may be the height permitted in the applicable zone district. An ADU must be at least 110 square feet based on the California Building Code.

Utility Meters: An ADU is not considered a new residential use for purposes of calculating connection fees unless constructed concurrent with a new SFD onsite.

Parking: A previous revision of the state's legislation allows parking within setback areas or as tandem parking on driveways. Covered parking is not required. If a carport or garage is converted or demolished for the construction of an ADU, the primary home parking is no longer required.

Processing time: The overall time to process an ADU and/or JADU must be reduced to 60 days.

Nonconforming: The correction of nonconforming structures requesting conversion to accessory units shall not be a condition for ministerial permits.

Owner-occupied: If a JADU is constructed within a single-family home, the owner must reside in either the JADU or the primary home. A Covenant Agreement is required to be recorded. For an ADU, there is no requirement for the owner to occupy either the primary unit or the ADU.

ENVIRONMENTAL REVIEW

The proposed amendment to Title 17 Zoning, amending Chapters 17.16.060 by adding language and amending Section 17.136.150 to delete the language from subpart (A) and (B) and add 17.136.150.010 through 17.136.150.130 is exempt per Section 15061(b)(3) (General Rule) of the California Environmental Quality Act (CEQA) Guidelines because the project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance amendments are covered by the commonsense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed ordinance amendments are to bring city regulations into compliance with state mandates and will not affect any scenic highway or resources, propose development on a hazardous waste site which is included on any list compiled pursuant to Section 65962.5 of the Government Code, does not affect any site that could qualify as historical resources and no structures are to be demolished, nor would the project have a significant adverse impact on a historic resource.

ATTACHMENTS

1. Planning Commission Resolution No. 0004-2023

2. Draft Ordinance amending Title 17 of the Municipal Code

3. Draft Ordinance Amending Title 17 Zoning by adding language to Chapter 17.16.060 and amending Section 17.136.150 by deleting subparts (A) and (B) and adding 17.136.150.010 through 17.136.150.130.

4. California Department of Housing and Community Development – Accessory Dwelling Unit Handbook – Updated July 2022.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCFARLAND ADOPTING ZONING CODE AMENDMENTS TO TITLE 17 ZONING AMENDING TITLE 17, CHAPTER 17.16.060 AND CHAPTER 17.136.150 ADDITIONAL DWELLING UNITS AND ACCEPT CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) A NOTICE OF EXEMPTION.

WHEREAS, the City Council desires to amend Title 17 Zoning as follows: Chapter 17.16, Section 17.136.150 to delete 17.136.150(A) and (B) and to add 17.136.150.010-17.136.150.130.

WHEREAS, on October 17, 2023, at after a duly noticed public hearing, the Planning Commission considered the Proposed Amendments, including presentations from City staff, oral testimony, and written testimony; and

WHEREAS, after the above-mentioned public hearing, the Planning Commission adopted Resolution No.004-2023 which recommended that the City Council adopt this Ordinance; and

WHEREAS, on ______________, 2023, the City Council conducted a duly noticed public hearing regarding this Ordinance, where it received presentations from City staff, oral and written testimony from members of the public, and introduced the ordinance; and

WHEREAS, after the above-mentioned City Council public hearing, the City Council now desires to amend Title 17 Zoning by amending Chapters 17.16.060 and Section 17.136.150 to delete the language from subpart (A) and (B) and adding 17.136.150.010 through 17.136.150.130.

NOW, THEREFORE, the City Council of the City of McFarland does hereby ordain as follows:

1. The Recitals set forth above are true and correct and incorporated herein.
2. Copies of the environmental document and full text of the deletion and addition to Title 17 Zoning were made available for public inspection during public review period at the City Clerk's office and the City of McFarland Community Development Department, 401 W Kern Avenue, McFarland, CA 93250 and on the City's website.
3. Based upon its own independent judgment and substantial evidence in the record of proceedings related to the Proposed Ordinance amendments, the City Council approves the Notice of Exemption.
4. This Ordinance establishes the opportunity for the efficient review and approval of accessory dwelling units.

Code Amendments are as follows:

1. AMEND TITLE 17 ZONING, CHAPTER 17.16.060 DWELLING UNITS PER LOT

Chapter 17.16 Single Family Residential Zone, Section 17.16.060 Dwelling units per lot.

Subject to the exceptions stated in Section 17.136 of this Code, not more than one dwelling unit shall be allowed on each lot.

2. AMEND TITLE 17 ZONING, CHAPTER 17.136.150 ADDITIONAL DWELLING UNITS:

Chapter 17.16 General Provisions, Section 17.136.150 Additional dwelling units.

~~A. Notwithstanding any other provisions of this title, where a lot in the R-1 zone has an area of twelve thousand square feet or more and with adequate provisions for ingress and egress, a conditional use permit may be granted by the planning commission for the construction of additional one-family dwellings and allowable accessory buildings; however, the minimum site area shall be six thousand square feet of lot area per each one-family dwelling. Notwithstanding any other provisions of this title, where a lot in the R-2 zone has an area of nine thousand square feet or more and with adequate provisions for ingress and egress, a conditional use permit may be granted for the construction of additional family dwelling units and allowable accessory buildings; however, the minimum site area shall be three thousand square feet of lot area per each family dwelling unit.~~

~~B. The procedure for filing of applications, filing fees, investigation, notices, public hearings and findings shall be the same as provided in this title for variances.~~
~~(Ord. 109 § 32.14, 1969)~~

17.136.150.010 – Purpose and Applicability.

A. Purpose. The purpose of this chapter is to comply with Government Code Section 65852.2 (Accessory Dwelling Units), 65852.22 (Junior Accessory Dwelling Units), and 65852.26 (Sale or Conveyance of Accessory Dwelling Unit Separate from Primary Residence) as amended from time to time by the State, which provides for cities to set standards for the development of accessory dwelling units (ADUs) and Junior ADUs (JADUs) so as to increase the supply of smaller and affordable housing while ensuring that they remain compatible with the existing neighborhood. Accessory dwelling units are considered to be a residential use, consistent with the General Plan objectives and zoning regulations, and enhance housing opportunities, including near transit for residential lots zoned to allow single family, homes or multi-family units.

B. This chapter is intended to implement the City's Housing Element of the General Plan and is adopted to comply with State law (Government Code Section 65852.2 and 65852.22), by allowing ADUs through ministerial review in all districts zoned to allow single- family, multi-family, or mixed uses, subject to meeting the standards prescribed below.

C. Permitted Locations. The provisions included in this chapter are applicable to all lots that 1) are zoned to allow single-family, multi-family residential, or mixed uses; and 2) include a proposed or existing primary dwelling.

17.136.150.020 – Application Process.

D. Permit Required. An Administrative Permit in compliance with Chapter 17.160 is required for ADUs along with a Building Permit.

E. Review and Approval – Ministerial Review. An Administrative Permit in compliance with Chapter 17.160 for an ADU shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding California Government Code Sections 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits within 60 days of acceptance of a complete application.

1. Exception: Should the permit application to create an ADU be submitted concurrently with a permit application to create a new single-family dwelling on the lot, in which case the City shall not act on the ADU permit application until the City acts on the permit application for the new single-family dwelling unit; or The applicant requests a delay, in which case the sixty (60)-day time period shall be tolled for the period of the delay. If the City has not acted upon the completed application for the ADU within 60 days, and neither of the above exceptions are met, then the application for the ADU shall be deemed approved.

F. ADU shall be subject to this section and under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in this Chapter. ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process, Conditional Use Permit, if the applicant chooses to pursue this route. In this scenario, the applicant assumes time and monetary costs associated with a discretionary approval process.

<u>17.136.150.030 – Submittal Requirements.</u>

A. The completed application, Administrative Permit, shall be submitted to the Community Development Department on an application form prepared by the Community Developent Director and shall include the submittal requirements as defined by Chapter 17.160. Upon approval of the Administrative Permit, the applicant shall submit a building permit application. Fees for an ADU shall be established by the City Council and said fees shall be, but not limited to, Administrative Permit Application, Building Plan Check Fees, Building Permit Fees, and state mandated fees relating to the issuance of building permits.

<u>17.136.150.040 – Type of Accessory Dwelling Units.</u>

A. Types of Accessory Dwelling Units.

1. Attached ADU. An ADU attached to an existing or proposed primary dwelling and located on the same lot as the proposed or existing primary dwelling, which provides complete independent living facilities for one (1) or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. The attached ADU shall have an exterior entrance separate from the main house.
2. Detached ADU. An ADU structurally independent and detached from an existing or proposed primary dwelling and located on the same lot as the proposed or existing primary dwelling, which provides complete independent living facilities for one (1) or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation.
3. Internal Conversion ADU. An ADU may be located within areas converted to habitable space, such as:
   i. An area within an existing single-family dwelling (e.g., attached garage) and on the same lot as the existing dwelling with a separate exterior entrance; or

ii. An existing accessory structure (e.g., detached garage or pool house) located on the same lot as an existing single-family dwelling with a separate exterior entrance; or

iii. Portions of existing multi-family structures that are not used as livable space including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

<u>17.136.150.050 – Number and Types of ADUs Permitted Per Legal Parcel or Lot.</u>

A. Lots with a Single-Family Dwelling. The following number and types of ADUs shall be allowed per lot that is zoned to allow single-family residential uses and includes a proposed or existing single-family dwelling.
   1. One (1) attached ADU; or
   2. One (1) detached ADU; and
   3. One (1) JADU (See Section 17.136.150.120).

B. Lots with a Multi-Family Dwelling(s). The following number and types of ADUs shall be allowed per lot that is zoned to allow multi-family residential uses and includes a proposed or existing multi-family dwelling.
   1. Conversion of non-livable spaces to create ADU(s). At least one (1) ADU within the portions of existing multi-family structures, from the conversion of non-livable area, shall be allowed per lot that is zoned to allow multi-family residential uses and includes an existing multi-family structure, so long as it does not exceed 25 percent of the total number of existing dwelling units. ADUs within multi-family structures must be converted from non-livable areas and if no non-livable areas exist, no ADUs will be permitted.
   2. Detached ADU(s). Not more than two (2) ADUs, conversion of existing accessory structures and/or new construction, that are located on a lot that is zoned to allow multi-family residential uses and includes an existing or proposed multi-family dwelling.

<u>17.136.150.060 – Development Standards.</u>

A. Site/Location Requirements.
   1. Minimum Lot Size. ADUs that comply with this Chapter shall be permitted on all legally established parcels, regardless of parcel size.
   2. Lot Coverage. Not applicable.
   3. Space Between Buildings shall be established in the applicable zone district.

B. Size and Floor Area.
   1. Detached ADU. The maximum floor area of a new construction of a detached ADU is 1,200 square feet.
   2. Attached ADU. The maximum floor area of an attached ADU shall not exceed 50 percent of the floor area of the existing primary dwelling for an attached ADU but is permitted to be at least 800 square feet.

C. Height and Number of Stories. All ADUs shall comply with the minimum height restrictions as established in the applicable zone district.

D. Setbacks. All ADU Setbacks shall ensure accessibility for health and safety emergency personnel and shall provide site visibility at street and alley intersections. The side yard setbacks listed below ensure health and safety access by emergency personnel and site visibility at street intersections. Where utility easements exist, should the minimum setback encroach into the easement, the setback shall be increased to be equal to or greater than the width of the utility easement(s).

1. Front Yard Setbacks. All ADUs shall meet the minimum front yard setback as established in the applicable zone district.
2. Rear and Side Yard Setbacks shall be the minimum as listed below, except where public utility easement(s) requires a greater setback.
   i. Interior Side Yard Setbacks: Interior Side Yard shall be a minimum of four (4) feet.
   ii. Corner Side Yard Setback – Corner yard setback shall be six (6) feet.
   iii. Interior Rear Yard Setback: Interior Rear Yard Setback shall be a minimum of four (4) feet for interior lots.
   iv. Corner Rear Yard Setback: Corner Rear Yard Setback for corner lot shall be a minimum of six (6) Feet.
3. When an existing structure is converted to an ADU, and the existing structure either has no setbacks or has setbacks of less than four (4) feet, then the ADU shall maintain the same setbacks as the existing structure or setbacks of four (4) feet from the side and rear yards, whichever is less, if the ADU is constructed in the same location and to the same dimensions as the existing structure.
   i. Conversion of existing structures to an ADU not meeting the minimum setbacks shall be designed and/or retrofitted to meet the Fire and Building codes.

E. Parking Requirements.
   1. One (1) parking space shall be provided per ADU, where applicable. This space may be provided as tandem parking on a driveway where the parking of vehicles do not block sidewalks nor pedestrian access. Parking of vehicles shall not be within four (4) feet of the interior side yard and shall not be within six (6) feet of a corner side yard setbacks. The four (4) foot and six (6) foot non-parking areas are to ensure health and safety access by emergency personnel and site visibility at street intersections.
   2. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, replacement parking is not required. Off-street parking may be within the front yard setback area and may be designed as tandem parking or other design that accommodates off-street parking. The City code requires two (2) off-street parking spaces per dwelling unit but does not require garages nor carports for off-street parking. Therefore, two-off-street parking spaces are required and when required one off-street parking for the ADU. As noted, tandem parking shall not block sidewalks, landscape areas or public access.
   3. Exceptions. No parking shall be required for ADUs in any of the following instances:
      i. The ADU is located within one-half mile walking distance of public transit.
      ii. The ADU is located within an architecturally and historically significant historic district.
      iii. The ADU is part of the proposed or existing primary residence or an accessory structure.

iv. When on-street parking permits are required but not offered to the occupant(s) of the ADU.
v. There is a car share vehicle located within one (1) block of the ADU.

F. Architectural Review. The construction of new ADUs shall be subject to Section 17.134.030 Single-family residential Standards.
G. Access and Entry. An ADU shall have a separate entry from the primary residence and shall be from the side or rear yard.
H. Density Limits. An ADU that conforms to the ordinance shall be deemed to be an accessory use or accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located and shall be deemed to be a residential use which is consistent with the existing general plan land use and zoning designations for the lot. The ADU shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

17.136.150.070 – Other Requirements.

A. Availability of Utilities.
   1. Utility Connections. ADUs may be subject to utility connections as provided herein.
   2. Private Sewage Disposal System. ADUs not serviced by the City's wastewater system must receive clearance from the Kern County Public Health Services Department. The applicant shall provide clearance to the City Building Division prior to the issuance of a building permit.
B. Addressing. The ADU shall be required to apply for and pay the adopted addressing fee for the proposed ADU(s), whether the ADU is an attached or detached. The address must be assigned prior to the issuance of the building permit.
C. Fire Sprinklers. Installation of fire sprinklers may not be required in ADUs (attached, detached, or conversion) where sprinklers were not required by building codes for the existing primary residence. For example, a detached single-family home designed and constructed decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. However, if the same primary dwelling recently underwent significant alteration and is now required to have fire sprinklers, any ADU created after that alteration must be provided with fire sprinklers. (Government Code Section 65852.2, subds. (a)(1)(D)(xii) and (e)(3).) Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the "primary residence" for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers. For additional guidance on ADUs and fire sprinkler system requirements, please consult the Office of the State Fire Marshal. If fire sprinklers are not required for the primary residence, then installation of fire sprinklers is not required in an ADU. However, if the primary residence undergoes significant remodeling and is required to install fire sprinklers, an ADU created after the remodel would also be required to install fire sprinklers.
D. Solar Panels. New ADUs are subject to the California Energy Code requirement (excluding manufactured homes) to provide solar systems if the unit(s) is a newly constructed, non-manufactured, detached ADU (though some exceptions apply). Per the California Energy Commission (CEC), the solar systems can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from

non-residential to residential space, are not subject to the Energy Code requirement to provide solar systems.

E. Flood Elevation Certification. All ADUs are required to comply with Chapter 15.12 Floodplain Management when the proposed ADU is located within the FEMA Flood Hazard area which has a one (1) percent annual chance for shallow flooding. If applicable, prior to the issuance of the building permit, compliance with Section 15.12.170(C) of the McFarland Municipal Code and prior to the issuance of the building permit, a Flood Certification shall be provided.
F. Building Code compliance is required for all ADUs. The Community Development Department will not issue final building permits for an ADU before approval of building permits for the primary dwelling.
G. Kern County Fire Department Clearance shall be required prior to the issuance of a building permit for an ADU.
H. Other Code compliance as may be applicable, such as but not limited to encroachment permits, lot mergers, lot line adjustments, etc.

17.136.150.080 – Occupancy, Rental, and Sale Limitations

A. Owner Occupancy shall not be required for ADUs.
B. Rental of ADUs shall be a minimum of 30 days.
C. Separate Conveyance. An ADU may be rented separate from the primary residence but may not be sold or otherwise conveyed separate from the primary residence, except when sold by a qualified nonprofit corporation to a qualified buyer in accordance with California Government Code Section 65852.26 with affordability restrictions.

17.136.150.090 – Fee Requirements.

A. Connection Fees or Capacity Charges. An ADU shall not be considered to be a new residential use for the purposes of calculating connection fees or capacity chargers for utilities, including water and sewer service, unless the ADU was constructed with a new single-family dwelling. Where a new ADU and new residential unit is applied for and constructed, the new ADU and new residential unit shall pay the applicable Sewer Connection Fee in place at the time of submittal.
B. Impact Fees. Impact fees shall not be imposed on an ADU that is less than 750 sf. in size. For ADUs that are greater than 750 sf. in size, impact fees charged shall be proportionate in relation to the square footage of the primary dwelling unit.
C. Permit Processing Fee. Application fees shall be as established by resolution of the City Council for the processing of the planning and building permit applications. Other fees such as but not limited to file maintenance and technology fees shall be required. All state mandatory fees associated with building permits shall be required.
D. Monthly Charges for Sewer and Water. ADUs shall be subject to the monthly utility fees for wastewater. Water service is provided by the City and as such an ADU may be subject to the monthly utility fees for domestic water service.

17.136.150.100 – Conditions for Non-Conforming Uses and Structures.

A. Nonconforming Conditions. Notwithstanding Chapter 17.136.050, to the contrary, an owner of an ADU that receives a notice to correct violations or abate nuisance, in relation to the ADU, may request a delay for five years in in enforcement of a building standard, as long as the violation is not a health and safety issue as determined by the City's Building

Official, subject to compliance with the Health and Safety Code Section 17980.12 and the following conditions:

1. The ADU was built before January 1, 2020.
2. The ADU was built on or after January 1, 2020, in a local jurisdiction that, at the time the ADU was built, had a noncompliant ADU ordinance, but the ordinance is compliant at the time the request is made.

<u>17.136.150.110 – Definitions Accessory Dwelling Units</u>. For purposes of this section, the following terms have the following meanings.

A. "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
   a. An efficiency unit.
   b. A manufactured home, as defined in Section 18007 of the Health and Safety Code.
B. "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
C. "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
D. "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
E. "Local agency" means a city, county, or city and county, whether general law or chartered.
F. "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
G. "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
H. "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
I. "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
J. "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
K. "Impact Fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact Fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
L. Multiple detached dwellings on a lot in the R-2, R-3, and R-4 Zones: A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure and by building a new detached ADU subject to certain development standards. (Government Code Section 65852.2, subds. (e)(1)(A) and (B).)
M. Multifamily dwelling under ADU Law is as follows: For the purposes of State ADU Law, a structure with two or more attached dwellings on a single lot is considered a multifamily

dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of State ADU Law.

17.136.150.120 – Junior Accessory Dwelling Units.

A. Permitted one (1) junior accessory dwelling units (JADU) in single-family residential zones.

B. An administrative permit shall be required for the creation of a JADU, and shall do all the following:
   1. One (1) JADU per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.
   2. Require owner-occupancy in the single-family residence in which the JADU will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.
   3. Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following.
      i. A prohibition on the sale of the JADU separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.
      ii. A restriction on the size and attributes of the JADU that conforms with this section.
   4. A permitted JADU shall be constructed within the walls of proposed or existing single-family residence.
   5. The JADU shall provide a separate entrance from the main entrance to the proposed or existing single-family residence.
   6. The JADU shall provide an efficiency kitchen, which shall include all of the following:
      i. A cooking facility with appliances.
      ii. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.
   7. A JADU shall not require additional parking as a condition to grant a permit.

C. JADU shall be required to submit a building permit and pay adopted fees for planning clearance, Administrative Permit and Maintenance Fees, building fees relating to plan checks, building permit, inspection, including the imposition of a fee for that inspection, to determine if the JADU complies with applicable building standards.

D. An application for a JADU, notwithstanding State of California Government Code, Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The Planning Division shall act on a completed application to create a JADU within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a JADU is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the JADU until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the JADUI shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.

E. Fees for a JADU shall be established by the City Council and said fees shall be, but not limited to, Administrative Permit Application, Building Plan Check Fees, Building Permit Fees, and state mandated fees relating to the issuance of building permits.
F. For purposes of any fire or life protection ordinance or regulation, a JADU shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a JADU so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a JADU or not.
G. For purposes of providing service for water, sewer, or power, including a connection fee, a JADU shall not be considered a separate or new dwelling unit.
H. This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a JADU, so long as that ordinance or regulation applies uniformly to all single- family residences regardless of whether the single-family residence includes a JADU.

<u>Section 17.136.150.130 Definitions Junior Accessory Dwelling Unit (JADU).</u> For purposes of this section, the following terms have the following meanings:

A. "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.
B. "Local agency" means a city, county, or city and county, whether general law or chartered.
C. Effective January 1, 2020, Section 17980.12 was added to the Health and Safety Code, immediately following Section 17980.11, to read: For purposes of this section, the following terms have the following meanings:
    a. "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.
    b. "Local agency" means a city, county, or city and county, whether general law or chartered.
D. Effective January 1, 2020 Section 17980.12 was added to the Health and Safety Code, immediately following Section 17980.11, to read:
    a. 17980.12. (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:
        i. The accessory dwelling unit was built before January 1, 2020.
        ii. The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a

noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

iii. The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

iv. The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

v. The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

b. For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

c. This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

This Ordinance shall take effect and be in full force and effect from and after thirty (30) calendar days after its final passage and adoption. Within fifteen (15) calendar days after its adoption, the Ordinance, or a summary of the Ordinance, shall be published once in a newspaper of general circulation.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the City Council of the City of McFarland, California on the ______ day of ________ 2023, by the following vote:

	Aye	**Nae**	**Abstain**	**Absent**
Saul Ayon				
Maria T. Perez				
Anita Gonzalez				
Amador Ayon				
Ricardo Cano				

Saul Ayon, Mayor

I hereby certify that the foregoing Ordinance was duly and regularly adopted by the City Council of the City of McFarland by a regular meeting thereof held on August 24, 2023.

ATTEST:

Francisca Alvarado, City Clerk

APPROVED AS TO FORM:

Nathan M. Hodges, City Attorney

RESOLUTION NO. 2023-0004

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MCFARLAND RECOMMENDING THAT THE CITY COUNCIL APPROVE PROPOSED ZONING CODE AMENDMENTS RELATING TO ACCESSORY DWELLING UNITS AND ACCEPT CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) A NOTICE OF EXEMPTION.

WHEREAS, at its regular meeting on October 17, 2023, the Planning Commission conducted a duly noticed public hearing in which it considered all written and oral testimony, including but not limited to written and oral testimony from the public and staff presentations and reports;

WHEREAS, the Planning Commission therefore recommends the City Council that it adopt the proposed ordinance, attached hereto as Exhibit A ("Proposed Ordinance").

WHEREAS, copies of the environmental document and additions, deletions, and amendments to Title 17 Zoning made available for public inspection during public review period at the City Clerk's office and the City of McFarland's Community Development Department, 401 W Ken Avenue, McFarland, CA 93250 and on the City's website; and,

WHEREAS, the City proposed ordinance is exempt from the California Environmental Quality Act (CEQA) per Section 15061(b)(3) of said guidelines.

NOW, THEREFORE, the Planning Commission of the City of McFarland (the "Planning Commission") hereby finds, determines, resolves and orders as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by this reference.

Section 2: Based upon its own independent judgment and substantial evidence in the record of proceedings related to the Proposed Ordinance amendments, the Planning Commission recommends that the City Council adopt the Notice of Exemption.

Section 3: Based upon the foregoing and its independent judgment, the Planning Commission recommends the City Council of the City of McFarland adopt the Proposed Ordinance, attached hereto as Exhibit A.

Section 4: This Resolution shall become effective immediately.

I HEREBY CERTIFY that the foregoing is a full,, true and correct copy of the resolution of the Planning Commission of the City of McFarland at a meeting held on October 17, 2023 duly adopted and passed by the following vote:

AYES: ____

NOES: ____

ABSTAIN: ______________________________

ABSENT: ______________________________

ATTEST

____
PAUL M. SALDANA
Commission Secretary

MCFARLAND PLANNING COMMISSION

____
Marco Martinez, Chair

APPROVED AS TO FORM:

By: ______________________
NATHAN HODGES, City Attorney
Hodges Law Group

City of McFarland

Planning Commission Meeting

STAFF REPORT

Agenda Item No. 3.
Section: PUBLIC HEARINGS
Meeting Date: December 12, 2023

TO: Honorable Mayor and Council Members

FROM: Paul Saldaña , Community Development Director

SUBJECT: Development Agreement – OTC McFarland, LLC

Conduct a Public Hearing and consider adoption of Resolution No. 0006-2023 recommending that the City Council approve proposed Development Agreement with OTC McFarland LLC pursuant to Chapter 19.04 of the Municipal Code.

SUMMARY:

FINANCIAL IMPACT:

RECOMMENDATION:

ATTACHMENTS:

1. Development Agreement -OTC McFarland LLC

PLANNING COMMISSION STAFF REPORT
December 12, 2023

TO:	Chair and Planning Commissioners
FROM:	Paul Saldana Community Development Director
DATE:	December 12, 2023

Agenda Item	
Presentation	
Departmental Reports	
Consent Agenda	
Public Hearings	X
Discussion Items	
Other	
Action Requested	
Ordinance	X
Resolution	X
Motion	
None	

PROJECT DESCRIPTION: Development Agreement – OTC McFarland LLC

ENVIRONMENTAL DOCUMENT: Notice of Exemption

APPLICANT: OTC McFarland

SECTION: Chapter 19.04 of Municipal Code

STAFF RECOMMENDATION

The staff recommends the Planning Commission consider and adopt Resolution 2023-0005 of the Planning Commission of the City of McFarland recommending the City Council adopt the Ordinance approving the Development Agreement with OTC McFarland, LLC and accept California Environmental Quality Act (CEQA) Notice of Exemption.

BACKGROUND

On February 23, 2023 the City Council adopted Ordinance No 02-2023 which added Chapter 19.04 to provide for and regulate commercial cannabis businesses within the City of McFarland. The regulations and supplemental application were made available to interested parties to apply for a Commercial Cannabis Business Permit ("Permit"). Additionally, the City Council modified Chapter 19.04 to allow for commercial cannabis business operations within a C-2 zone subject to a Development Agreement.

OTC McFarland LLC ("OTC") submitted an application pursuant to Chapter 19.04 with a request for a Permit for a commercial cannabis business to be located at 981 Frontage Avenue. The property is owned by Guadalupe Garcia Diaz who signed the appropriate agreement indicating that OTC had authority to submit the permit. Staff reviewed the application provided by the OTC and upon determine that it was complete, forwarded the application to the Cannabis

Committee. Concurrently, the City began negotiations with OTC regarding the development agreement and reached agreement on the framework for the agreement, the draft of which is attached. The agreement provides for the following:

- Provides for a 10 year term commencing on the effective date of the agreement.
- Provides for permitted use of the commercial cannabis operation in a C-2 zone and subjects the conditions of the approval to the measures outlined in Chapter 19.04 and the specific measures outlined in the Commercial Cannabis Permit which will be issued upon the effective date of the agreement.
- Provides for a combined cannabis tax and exaction equivalent to 15% of gross receipts each month from operations generating an estimated $2.25 million in general fund revenue at buildout.
- Establishes a public benefit fund equal to 1% of gross receipts from operations which will provide $150,000 annually in support for local nonprofits, community events and activities.
- Sets in place the standards for inspection to ensure compliance with the City's regulations and conditions for which the development agreement may be terminated and the permit revoked, concurrent with Chapter 19.04.

The City Council will consider the draft ordinance and agreement at their December 14, 2023 meeting. Upon introduction, final consideration will be considered on January 11, 2024 and would become effective 30 days later. It is expected that OTC will file for a building permit for site improvements and commence construction shortly after the effective date.

City staff has determined that the project is exempt from CEQA pursuant to Sections 15061(b)(3) and 15301 (Existing Facilities) of the CEQA guidelines. A notice of exemption will be filed upon final reading of the ordinance.

Likewise, the proposed development agreement is consistent with the General Plan and zoning regulations, particularly Chapter 19.04.

ATTACHMENTS

1. Planning Commission Resolution No. 0005-2023
2. Draft Development Agreement
3. Draft Ordinance approving Development Agreement

ORDINANCE NO. 13-2023

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCFARLAND, CALIFORNIA, APPROVING ADOPTING AN UNCODIFIED ORDINANCE, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MCFARLAND AND OTC MCFARLAND, LLC AND GUADALUPE F. GARCIA DIAZ FOR THE DEVELOPMENT OF A COMMERCIAL CANNABIS BUSINESS AT 981 FRONTAGE ROAD, MCFARLAND CA

Section 1. Recitals

WHEREAS, Sections 65864-65869.5 of the California Government Code authorize the City of McFarland ("City") to enter into development agreements and requires the planning agency of the City to find the proposed development agreement to be consistent with the policies and programs of the General Plan and any applicable specific plan, which the Planning Commission has done; and

WHEREAS, Government Code section 65865 authorizes the City to enter into development agreements with any person having a legal or equitable interest in real property; and

WHEREAS, OTC McFarland LLC ("Developer") has filed the a commercial cannabis permit application with the City for development of 981 Frontage Road, in McFarland , California, APN: 201-031-03-00-0, ("Property") for the development of commercial cannabis business under Chapter 19.04 of the McFarland Municipal Code (the "Project"); and

WHEREAS, the City performed a preliminary environmental assessment pursuant to the requirements of the California Environmental Quality Act (California Public Resources Code section 21000, *et seq.*) and the Guidelines thereunder (14 California Code of Regulations section 15000, *et seq.*) (collectively, "CEQA"), and determined the Project Approvals were subject to exemptions pursuant to CEQA Guidelines Section 15061(b)(3) and 15301 (Existing Facilities); and

WHEREAS, On December 12, 2023 at a duly noticed public meeting and after due review and consideration of (i) the report of City staff on the Project Applications, (ii) all other evidence heard and submitted at the public hearing, and (iii) all other appropriate documentation and circumstances, the Planning Commission of the City adopted resolutions recommending that the City Council: (1) adopt the exemption pursuant to CEQA Guidelines Sections 15061(b)(3) and 15301(Existing Facilities) in compliance with CEQA; and (3) approve this Development Agreement

WHEREAS, On December 14, 2023, at a duly noticed public meeting and after introduction of the ordinance due review and consideration of (i) the report of City staff on the Project Applications, (ii) the recommendations of the Planning Commission, (iii) all other evidence heard and submitted at the duly noticed public hearing conducted and closed, and (iv) all other appropriate documentation and circumstances.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MCFARLAND DOES ORDAIN AS FOLLOWS:

1. The above recitals are true, correct and hereby incorporated by reference.

2. The City Council adopts the exemption pursuant to CEQA Guidelines Sections 15061(b)(3) and 15301(Existing Facilities) in compliance with CEQA and adopt any attendant findings required by CEQA;

3. The City Council approves the Development Agreement by and between The City Of McFarland and OTC McFarland LLC and Guadalupe F. Garcia Diaz as an uncodified ordinance attached hereto as Exhibit "A,"

3. Direct the Mayor or the City Manager or his/her designee to finalize and execute this Agreement on behalf of the City.

4. This Ordinance shall take effect and be in full force and effect from and after thirty (30) calendar days after its final passage and adoption.

INTRODUCED, at a regular meeting of the City Council of the City of McFarland, California on 12/14/2023, by the following vote:

PASSED AND ADOPTED at a regular meeting of the City Council of the City of McFarland on by the following vote:

	Aye	**Nae**	**Abstain**	**Absent**
Saul Ayon				
Ricardo Cano				
Amador Ayon				
Anita Gonzalez				
María T. Pérez				

Francisca Alvarado, City Clerk

I hereby certify that the foregoing Ordinance was duly and regularly adopted by the City Council of the City of McFarland by a regular meeting thereof held on December 14, 2023.

ATTEST:

Saul Ayon, Mayor

APPROVED AS TO FORM:

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Community Development Director
City of McFarland
401 W. Kern Ave.
McFarland, CA 93250

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Recording Fee Exempt per Government Code §6103

DEVELOPMENT AGREEMENT

by and between

The City of McFarland,
a California municipal corporation

and

OTC McFarland LLC,
a California limited liability company

and

Guadalupe F. Garcia Diaz

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Development Agreement") is made and entered into this ___ day of ______, 2023 (the "Record Date"), by and among the City of McFarland, a municipal corporation organized and existing under the laws of the State of California (the "City") on one hand, and OTC Mc Farland LLC, a California limited liability company, ("Developer") and Guadalupe F. Garcia Diaz ("Owner" or "Landlord") on the other hand. The Parties to this Development Agreement may be referred to hereinafter individually as a "Party" or jointly as the "Parties."

RECITALS

A) In 1996, the California Legislature approved Proposition 215, also known as the Compassionate Use Act ("CUA"), which was codified under Health and Safety Code section 11262.5 et sec., and was intended to enable persons in need of medical marijuana for specified medical purposes, such as cancer, anorexia, AIDS, chronic pain, glaucoma and arthritis, to obtain and use marijuana under limited circumstances and where recommended by a physician. The CUA provides that "nothing in this section shall be construed or supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes."

B) In 2004, the California Legislature enacted the Medical Marijuana Program Act Health & Safety Code, § 11362.7 et seq.) ("MMP"), which clarified the scope of the CUA, created a state-approved voluntary medical marijuana identification card program, and authorized cities to adopt and enforce rules and regulations consistent with the MMP. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the MMP to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to enforce such ordinances civilly and criminally.

C) In September 2015, the California State Legislature enacted, and Governor Brown signed into law three bills – Assembly Bill 243, Assembly Bill 266, and Senate Bill 643 –which together comprise the Medical Marijuana Regulation and Safety Act (the "MMRSA"). The MMRSA created a comprehensive dual state licensing system for the cultivation, manufacture, retail, sale, transport, distribution, delivery, and testing of medical cannabis.

D) The MMRSA was renamed the Medical Cannabis Regulation and Safety Act (the MCRSA"), under Senate Bill 837 in June 2016, which also made included substantive changes to the applicable state laws, which affect the various state agencies involved in regulating cannabis businesses as well as potential licensees.

E) On November 8, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act AUMA") was approved California voters as Proposition 64 and became effective on November 9, 2016, pursuant to the California Constitution (Cal. Const., art. II,

§ 10(a).). Proposition 64 legalized the nonmedical use of cannabis by persons 21 years of age and over, and the personal cultivation of up to six (6) cannabis plants.

F) AUMA also created a state regulatory and licensing system governing the commercial cultivation, testing, and distribution of nonmedical cannabis, and the manufacturing of nonmedical cannabis products.

G) On June 27, 2017, Governor Brown signed the Legislature-approved Senate Bill 94. Senate Bill 94 combined elements of the MCRSA and AUMA to establish a streamlined singular regulatory and licensing structure for both medical and nonmedical cannabis activities. The new consolidated provisions under Senate Bill 94 is now known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA") to be governed by the California Bureau of Cannabis Control. MAUCRSA refers to medical cannabis as "medicinal cannabis" and nonmedical/recreational cannabis as "adult-use cannabis."

H) On September 16, 2017, Governor Brown signed Assembly Bill 133 into law, which provided cleanup and substantive changes to MAUCRSA, including the removal of the requirement that licensed premises remain "separate and distinct" for each license type.

I) MAUCRSA grants local jurisdictions discretion over whether businesses engaged in commercial cannabis activity may operate in a particular jurisdiction and, if authorized, where within such jurisdiction.

J) On February 23, 2023, the City Council approved Ordinance No. 0002-2023 amending the McFarland Municipal Code ("MMC") to add Chapter 19.04 to: (i) allow commercial cannabis businesses to operate within the City; (ii) require all cannabis businesses in the City to have a State license and a City cannabis business permit; (iii) establish procedures for the review and issuance of a cannabis business permits; and (iv) establish regulations related to such commercial cannabis business activities.

K) The MMC allows persons to engage in a permissible "Cannabis Business" upon the City's issuance of a "Cannabis Business Permit," which requires City approval of a Cannabis Permit, a development agreement if the business will operate within a C-2 zone, and other applicable approvals.

L) Developer is the owner of the Property (or) Developer affirms that it has an equitable interest in the real Property located at: 981 Frontage Road, in the City of McFarland, County of Kern, State of California, Assessor's Parcel Number 201-031-03-00-0 ("Property"), evidenced in a writing which is attached hereto and incorporated herein as Exhibit A for the purpose of carrying out the Project,

M) The Property is more particularly described in the legal description attached hereto as Exhibit B and the combined Property Plan and Floor Plan is attached hereto as Exhibit C.

N) Developer proposes to improve, develop, and use the Property for a Cannabis

Business (as defined below), in accordance with California Cannabis Laws (as defined below) and the MMC, as each may be amended from time to time (the "Project").

O) To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the California Legislature adopted Government Code section 65864 et seq. (the "Development Agreement Statute"), which authorizes the City and an individual with an interest in real property to enter into a development agreement that establishes certain development rights in real property that is subject to a development agreement application.

P) Consistent with the requirements of the Development Agreement Statute, the City adopted MMC, Chapter 19.04.200 ("Development Agreement Ordinance") authorizing the use of and establishing the procedures and requirements for the consideration of development agreements within the City.

Q) MMC, Sections 19.04.110, 19.04.190 and 19.04.200 requires submittal of an application along with information and supporting data as requested by the Director of Community Development for consideration of any development agreement for a Project located within C-2 zoning. Developer has satisfied this requirement. The following application(s) have been filed by the Developer with the City for the Property for the development of commercial cannabis related uses (the "Project"):

1) An application for this Development Agreement (the "DA Application").

2) An application for a site development permit filed by the Developer (the "Site Development Application") for architectural treatment, drainage, site aesthetics, and similar development within the Project Area (as more particularly described in the Site Plan Application).

3) An application filed by the Developer (the "Commercial Cannabis Permit Application") for a Commercial Cannabis Permit, as required by Chapter 19.04 of the McFarland Municipal Code, for cannabis uses in the Project Area (as more particularly described in the Commercial Cannabis Permit application).

The Site Development Application and the Commercial Cannabis Permit Application are hereinafter sometimes collectively referred to as the "Project Applications". Approval of the Project Applications is hereinafter sometimes collectively referred to as the "Project Approvals."

R) All required fees and costs have been paid for the filing, and the City's processing of, the Project Applications except for the payment of the City Preparation Costs (as hereinafter defined) which will be paid within thirty (30) days of the Effective Date (as hereinafter defined) of this Agreement.

S) Subsequent to the filing of the Project Applications, the City performed a preliminary environmental assessment pursuant to the requirements of the California Environmental Quality Act (California Public Resources Code section 21000, *et seq.*) and the Guidelines thereunder (14 California Code of Regulations section 15000, *et seq.*) (collectively, "CEQA"), and determined the Project Approvals were subject to exemptions pursuant to CEQA Guidelines Section 15061(b)(3) and 15301 (Existing Facilities).

T) Developer filed the DA Application for approval of this Agreement in order to: (1) vest the land use and zoning policies established in the Existing City Requirements (as hereinafter defined) as of the Adoption Date (as hereinafter defined) of this Agreement for the duration of the Term (as hereinafter defined) with respect to the Project Area and the Project; and (2) memorialize certain other agreements made between the City and Developer with respect to the Project Area and the Project.

U) The City has determined that this Agreement furthers the public health, safety and general welfare, and that the provisions of this Agreement are consistent with the goals and policies of the currently adopted McFarland General Plan. For the reasons recited herein, the City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Project Approvals and certain subsequent development approvals which could discourage and deter Developer from making the long-term commitments necessary to fully develop the property, thereby encouraging planning for, investment in, and commitment to use and develop the Project Area. Continued use and development of the Project Area is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Laws were enacted: (1) Provide for the development of unused land; (2) Provide increased tax revenues for the City; (3) Provide for jobs and economic development in the City; and (4) Provide infrastructure improvements that can be utilized by regional users and future users. It is based upon these benefits to the City that the City is agreeable to proceeding with the proposed Project Applications and Project Approvals.

V) The City has further determined that the provisions of this Agreement, including the uses and activities authorized herein, are compatible with the uses authorized in, and the regulations prescribed for, the zoning district and area in which the Property is located, and will not adversely affect the orderly development of property or the preservation of property values in the City.

W) The City has further determined that this Agreement, will provide for or result in contributions, services, or facilities that benefit the community and provides for payment by the Developer of all costs associated with preparing and entering into this Agreement as stated this Agreement.

X) The City has further determined that this Agreement provides reasonable remedies for violation of its terms, as stated in Section 10 hereof.

Y) The City, by electing to enter into contractual agreements such as this one, acknowledges that the obligations of the City shall survive beyond the term or terms of the present City Council members, that such action will serve to bind the City and future City Councils to the obligations thereby undertaken, and this Development Agreement shall limit the future exercise of certain governmental and proprietary powers of the City. By approving this Development Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Development Agreement, rather than deferring its actions to some undetermined future date. The terms and conditions of this Development Agreement have been found to be fair, just, and reasonable, and the City has concluded that the pursuit of this Development will serve the best interests of its citizens and the public health, safety, and welfare will be best served by entering into this obligation. The City acknowledges that Developer would not consider or engage in the Development without the assurances of development entitlements that this Development Agreement is designed to provide.

Z) On December 12, 2023, at a duly noticed public meeting and after due review and consideration of (i) the report of City staff on the Project Applications, (ii) all other evidence heard and submitted at the public hearing, and (iii) all other appropriate documentation and circumstances, the Planning Commission of the City adopted resolutions recommending that the City Council: (1) adopt the exemption pursuant to CEQA Guidelines Sections 15061(b)(3) and 15301(Existing Facilities) in compliance with CEQA; and (2) approve this Development Agreement.

AA) On December 14, 2023, at a duly noticed public meeting and after introduction of the ordinance due review and consideration of (i) the report of City staff on the Project Applications, (ii) the recommendations of the Planning Commission, (iii) all other evidence heard and submitted at the duly noticed public hearing conducted and closed, and (iv) all other appropriate documentation and circumstances, the City Council adopted an ordinance to: (a) adopt the exemption pursuant to CEQA Guidelines Sections 15061(b)(3) and 15301(Existing Facilities) in compliance with CEQA and adopt any attendant findings required by CEQA; (b) to effectuate the approval of this Agreement, upon making the findings required by section 19.04.200 of the McFarland Municipal Code; and (c) direct the Mayor or the City Manager or his/her designee to finalize and execute this Agreement on behalf of the City (collectively, the "City Council Ordinance").

BB) This Development Agreement will promote and encourage the development of the Property by providing Developer with a greater degree of certainty of the Developer's ability to expeditiously and economically complete the development effort, and the Parties agree that the consideration to be received by the City pursuant to this Development Agreement and the rights secured to the Developer hereunder constitute sufficient consideration to support the covenants and agreements of the City and Developer. By entering into this Development Agreement, the City desires to allow the Development pursuant to the Development Agreement utilizing the land-use ordinances, rules, regulations and policies applicable on the Effective Date, as defined in Section 3 of this Development Agreement and, pursuant to this Development Agreement, to vest in Developer and Owner, to the fullest extent possible under the law, all development entitlements required as of the Effective Date by the City in order to complete the Development.

AGREEMENT

NOW, THEREFORE, with reference to the above Recitals, which are incorporated herein by reference, and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties do hereby agree as follows:

1. Interests of Developer.

1.1 Recordation. This Agreement shall be recorded in the Official Records of the County of Kern County, and the City and Developer shall execute any documents reasonably required by the other to effectuate such recordation. This Agreement must be recorded with the Kern County Recorder prior to commencement of any commercial cannabis use on the Property, regardless of the existence of any conditional use permit, site plan, entitlement, City-issued commercial cannabis permit or State-issued license for cannabis operations at the Property or in the Property Area.

1.2 Recordation of Agreement. Within ten (10) calendar days following mutual execution of this Agreement by the City and Developer, the City shall cause this Agreement to be recorded in the official records of Kern County, California (the "Official Records") with respect to the Property. Following the recordation of this Agreement in the Official Records, the City shall deliver to Developer a confirmed copy of this Agreement evidencing the recording information.

1.3 Binding Covenants. The Developer represents: (1) it has a legal right of possession to the Property and/or equitable interest in the Project Area; (2) it has provided proof of such interest to the satisfaction of the City Manager; (3) it has provided proof of the authority of any agent or representative to act for the Developer in connection with this Agreement to the satisfaction of the City Manager; and (4) all other persons holding legal title in the Project Area are bound by this Agreement. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the land in the Project Area, and the burdens and benefits hereof shall bind an inure to all successors in interest to the Parties.

2. Term of Agreement.

2.1 Definitions. For purposes of this Agreement, the following shall have the meanings set forth below:

"Adoption Date" means the date on which the City Council adopted the ordinance approving this Agreement and authorizing the City Manager to execute this Agreement on behalf of the City.

"Effective Date" means Term Commencement Date, which shall be thirty (30) days after the Adoption Date.

"Laws" means the Constitution and laws of the State, the Constitution of the United States, and any codes, statutes, regulations, or executive mandates thereunder, and any court decision, State or federal, thereunder, provided that, any codes, statutes, regulations, or executive mandates under federal law that render cannabis illegal shall be excluded from this definition.

"State" means the State of California.

"Terminate" means the expiration of the Term of this Agreement, whether by the passage of time or by any earlier occurrence pursuant to any provision of this Agreement. The term "Terminate" includes any grammatical variant thereof, including "Termination" or "Terminated".

2.2 Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue for a period of ten (10) years following the Effective Date. The Term of this Agreement shall be extended for another five (5) years upon the mutual written agreement of Developer and the City, provided that, City shall not withhold its approval to extend the Term if Developer is in material compliance of this Agreement (collectively, "Renewal Term"). Any Term or Renewal Term shall be extended for any events pursuant to Section 12.1 and during the pendency of legal action, if any, challenging the Project Approvals, the adoption of an environmental finding or document for the Project pursuant to CEQA, or any legal action challenging or contesting the adoption of this Agreement. Any extension based upon an event described in this Section 2.2 shall be granted pursuant to the procedures set forth in Section 12. If any federal codes, statutes, regulations, or executive mandates are enacted or decreed after the Effective Date that render this Agreement economically unfeasible for Developer, then Developer and City agree to discuss in good faith an amendment to this Agreement to render this Agreement economically reasonable for Developer. Notwithstanding the foregoing, Developer shall be required to comply with the permit requirements of McFarland Municipal Code 19.04 et seq.

2.3 Termination. This Agreement shall terminate upon the occurrence of any of the following events:

2.3.1 The expiration of the Term;

2.3.2 The Developer no longer has a possessory, legal or other equitable interest in the Property;

2.3.3 The Developer has ceased all operations related to the Project on the Property for a period of one (1) year or more, unless Developer has received written consent by the city for such cessation;

2.3.4 Mutual written consent of the Parties;

2.3.5 The failure of the Developer to commence construction operation of the Project on the Property within the nine (9) months following the Effective Date of this Agreement;

2.3.6 Following the Term Commencement Date, the failure to have a valid Cannabis Business Permit for the Project;

2.3.7 Following the Term Commencement Date, the failure to have a valid State Cannabis Permit for the Project;

2.3.8 Unauthorized assignment of interest of the Project or the Property;

2.3.9 A breach of this Agreement, after proper notice provided, and the failure of the Developer to cure.

2.4 Effect of Termination. Upon any Termination of this Agreement, each Party shall retain any and all of the respective benefits that it received as of the date of Termination under or in connection with this Agreement. Termination of this Agreement shall not: (a) alter, impair or otherwise affect any City Permits for the Project that were issued by the City prior to the date of Termination; or (b) prevent, impair or delay Developer from (i) commencing, performing or completing the construction of any buildings or improvements in the Project or (ii) obtaining any certificates of occupancy or similar approvals from the City for the use and occupancy of completed buildings or improvements in the Project, that were authorized pursuant to City Permits for such construction issued by the City prior to the date of Termination. Nothing herein shall preclude the City, in its discretion, from taking any action authorized by Laws or Existing City Requirements to prevent, stop or correct any violation of Laws or Existing City Requirements occurring before, during or after construction of the buildings and improvements in the Project by Developer.

3. Development of the Project.

3.1 For purposes of this Agreement, the following shall have the meanings set forth below:

"Applicable Rules" collectively means: (a) the terms and conditions of the Project Approvals; (b) the terms and conditions of this Agreement; and (c) the Existing City Requirements.

"City Agency" means any office, board, commission, department, division or agency of the City.

"City Manager" means the City Manager of the City of McFarland, or designee.

"City Permits" collectively means any and all permits or approvals that are required under the City Requirements in order to develop, use and operate the Project, other than: (a) the Plan Amendments; (b) the Zoning Amendments; (c) the Project Approvals (except for a commercial cannabis permit); and (d) Future Discretionary Approvals (as hereinafter defined) that the Developer may elect to obtain from the City pursuant to Section 3.4. "City Permits" specifically include, without limitation, commercial cannabis permits, building permits and Technical City Permits.

"City Requirements" collectively means all of the following which are in effect from time to time: (a) the McFarland Municipal Code; and (b) all rules, regulations and official plans and policies, including the 2040 McFarland General Plan and any applicable Specific Plan, of the City governing development, subdivision and zoning that are applicable to the Project Area. The City Requirements may include, without limitation, requirements governing building height, maximum floor area, permitted and conditionally permitted uses, floor area ratios, maximum lot coverage, building setbacks and setbacks, parking, signage, landscaping, Exactions (as hereinafter defined) and dedications, growth management, environmental consideration, grading, construction, security measures, odor control and other items.

"Developer Approved Changes" means those amendments, revisions or additions to the City Requirements adopted or enacted after the Adoption Date that: (a) Developer elects, in its sole discretion, to have applied to the development and occupancy of the Project and the Project Area during the Term of this Agreement; and (b) the City Manager approves such application, which approval shall not be unreasonably withheld.

"Existing City Requirements" means the City Requirements that are in effect as of the Adoption Date of this Agreement.

"Permitted Rules Revisions" collectively means the following: (a) any Minor Changes to this Agreement that are proposed by Developer and approved by the City in accordance with Section 3.3; (b) any commercial cannabis activity regulations enacted by the City Manager; (c) any Future Discretionary Approvals that are applied for by Developer and approved by the City pursuant to Section 3.4; (d) any Authorized Code Revisions under Section 3.5 that are uniformly applied on a City-wide basis; and (e) written amendments to this Agreement that are mutually executed by City and Developer pursuant to Section 15.2.

"Technical City Permits" collectively means any of the following technical permits issued by the City or any City Agency in connection with any building or improvement in the Project: (a) demolition, excavation and grading permits; (b) foundation permits; (c) permits for the installation of underground lines and facilities for utilities, including without limitation, water, sewer, storm drain and dry utilities (electrical, gas, phone and cable); (d) any encroachment permits; and (e) any street improvement permits, including without limitation, permits for street lighting and traffic signals. "Technical City Permits" specifically excludes building permits from the City or any City Agency for the construction of particular buildings or improvements in the Project.

3.2 Development Approval. The following elements of the Project are hereby approved:

3.2.1 Permitted Uses of the Property. The Parties agree that the Developer's Project and use of the Property are currently permitted by the City and State of California. Notwithstanding any other terms and conditions contained herein, this Development Agreement is subject to the right of the City to: (i) take appropriate action to abate any public nuisance, excluding the Developer's Project and use at the Property, which is the retail sale of cannabis; (ii) to enforce all laws that do not conflict with Existing Development Regulations, as defined hereinafter; (iii) to enforce compliance with the conditions of approval expressed in any Cannabis Business Permit/ ("CBP") issued by the City with respect to the Project (and notwithstanding anything to the contrary contained herein or in the McFarland Municipal Code); (iv) to enforce the obligations and requirements of this Development Agreement; and (v) to exercise the police powers of the City in order to safeguard the health, safety, and wellbeing of the public, excluding the Developer's Project and use at the Property, which is the retail sale of cannabis.

3.2.2 Nothing in this Development Agreement shall be construed to prohibit uses other than the Project on the Property, provided such other uses are in conformity with: (i) the provisions of this Development Agreement; and (ii) the ordinances, regulations and standards of the City as they may from time to time be amended. The vested rights granted to Developer under this Development Agreement apply only to the Project and the use of the Project approved herein.

3.2.3 Development Standards. The City agrees to allow Development of the Project in accordance with the Existing Development Regulations as defined in Section 5 of this Development Agreement and any CBP. The purpose of this provision is to limit changes to the City's development standards as of the Effective Date.

3.3 Applicable Rules.

3.3.1 Except for the Permitted Rules Revisions and any Developer Approved Changes, Developer shall have the right to develop and occupy the Project during the Term in accordance with the Applicable Rules. In the event of any conflict between the provisions in this Agreement, the Project Approvals and the Existing City Requirements, such conflict shall be resolved in the following order of priority: (a) first, the requirements of Chapter 19.04 of the McFarland Municipal Code; (b) then, commercial cannabis activity regulations enacted by the City Manager; (c) then, this Agreement; (d) then, the Project Approvals; and (e) finally, any other Existing City Requirements.

3.3.2 Except for the Permitted Rules Revisions and any Developer Approved Changes, no amendment to, revision of, or addition to any of the City Requirements that is adopted or enacted after the Effective Date shall (i) be effective or enforceable by the City with respect to the Project or the Project Area or (ii) modify or impair the rights of Developer under this Agreement during the Term without the Developer's written approval, whether such amendment, revision or addition is adopted or approved by: (a) the City Council; (b) any City Agency; or (c) by the people of the City through referendum or initiative measure.

3.4 Minor Changes.

3.4.1 The Parties acknowledge that further planning and development of the Project may demonstrate that refinements and changes are appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire that Developer retain a certain degree of flexibility with respect to the details of the development of the Project and with respect to those items covered in general terms under this Agreement. If and when Developer finds that Minor Changes (as hereinafter defined) are necessary or appropriate, then upon written request by Developer, the Parties shall, unless otherwise required by federal, state or local ordinance and/or regulation, effectuate such changes or adjustments through administrative amendments executed by the Developer and the City Manager or his or her designee, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further changed and amended from time to time as necessary, with approval by the City Manager and the Developer.

3.4.2 The term "Minor Changes" collectively means: (a) minor deviations to the Project Approvals, including, the addition of cannabis permits, that are permitted under the Existing City Requirements and are reasonably approved by the City Manager; (b) a reduction in the parking ratio requirements for the Project consistent with the McFarland Municipal Code, provided that (i) the reduction does not exceed ten percent (10%) of the Code requirement, and (ii) the reduction is approved by the City Manager, which approval shall not be unreasonably withheld or denied; or (c) such other changes, modifications or adjustments to the Project Approvals, which the City Manager determines are consistent with the overall intent of the Project Approvals and which do not materially alter the overall nature, scope, or design of the Project, and which are consistent with the requirements of Chapter 19.04 of the McFarland Municipal Code and any commercial cannabis activity regulations enacted by the City Manager.

3.4.3 In effecting any Minor Changes, the City shall cooperate with the Developer, provided that the permitted uses are not modified from those in the Project Approvals and any changes are in accordance with the Existing City Requirements. Minor Changes shall not be deemed to be an amendment to this Agreement under California Government Code Section 65868 but are ministerial clarifications and adjustments, and unless otherwise required by law, no such administrative amendments shall require prior notice or hearing by the Planning Commission and City Council. Any amendment or change requiring an environmental impact report, or a supplement thereto, pursuant to CEQA shall not be considered a Minor Change, but shall be considered a substantive amendment which shall be reviewed and approved by the Planning Commission or the City Council as determined by the applicable provisions of the McFarland Municipal Code relating to the hearing and approval procedures for the specific Project Approval.

3.5 Future Discretionary Approvals. Nothing in this Agreement is intended, should be construed or shall operate to preclude or otherwise impair the rights of Developer from applying to the City during the Term of this Agreement for any of the following new approvals with respect to any proposed buildings and improvements in the Project (collectively, the "Future Discretionary Approvals"): (a) any new variance or conditional use permit that is required under the Existing City Requirements; (b) any subsequent Cannabis Business Permit/Commercial Cannabis Permit; and (c) any other approval (i) which is not otherwise addressed or set forth in this Agreement and (ii) which the Existing City Requirements mandate must be reviewed and approved by the Planning Commission or City Council. The City shall process, review and approve or disapprove any application for a Future Discretionary Approval filed by Developer in accordance with the City Requirements then in effect. The approval by the City of an application by Developer for a Future Discretionary Approval shall not require an amendment of this Agreement.

3.6 Authorized Code Revisions. This Agreement shall not prevent the City from applying to the Project the following rules, regulations and policies adopted or enacted after the Adoption Date, if uniformly applied on a City-wide basis (collectively, the "Authorized Code Revisions"):

3.6.1 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided that such changes in procedural regulations do not have the effect of materially interfering with the substantive benefits conferred to Developer by this Agreement.

3.6.2 Regulations which are not in conflict with this Agreement and which would not, alone or in the aggregate, cause development of the Project by Developer to be materially different, more burdensome, time consuming or expensive.

3.6.3 Regulations which are necessary to avoid serious threats to the public health and safety, provided that, to the maximum extent possible, such regulations shall be construed and applied in a manner to preserve the substantive benefits conferred to Developer by this Agreement.

3.6.4 Mandatory regulations of the State and the United States of America applicable to the Project, provided that, to the maximum extent if possible, such regulations shall be construed and applied in a manner to preserve to the Developer the substantive benefits conferred to Developer by this Agreement.

3.6.5 City Requirements imposing life safety, fire protection, mechanical, electrical and/or building integrity requirements with respect to the design and construction of buildings and improvements, including the then current applicable building codes.

3.6.6 Any commercial cannabis activity regulations enacted by the City Manager which are in compliance with the mandatory requirements of the McFarland Municipal Code.

3.7 Timing of Development. The actual timing and order of the development of any particular building(s), and/or site improvements within the Project shall be determined by Developer, in its sole discretion, based upon the then projected needs and resources of Developer, as long as all requirements set forth in this Agreement and the Project Approvals related to each designated building or buildings are satisfied by Developer.

3.8 No Obligation to Develop. Nothing in this Agreement is intended, should be construed nor shall require Developer to proceed with the construction of any improvements in the Project Area. The decision to proceed or to forbear or delay in proceeding with the implementation or construction of the Project or any buildings or improvements on the Project Area shall be in the sole discretion of Developer and the failure of Developer to proceed with construction of the Project or any such buildings or improvements on the Project Area shall not: (a) give rise to any rights of the City to terminate this Agreement; or (b) constitute an Event of Default (as hereinafter defined) or give rise to any liability, claim for damages or cause of action against Developer.

3.9 Hold on Certificate of Occupancy. Except as otherwise provided in Section 6.2.3, the City reserves the right to place a hold on the issuance of any required Certificate of Occupancy for a building in the Project in the event the Existing City Requirements or Conditions of Approval with respect to that building and any site improvements have not been substantially completed by Developer.

4. City Permits.

4.1 Review and Processing of City Permits. Except as otherwise expressly provided in this Agreement, all City Permits required for the construction, development and operation of the Project and any buildings and improvements therein which comply with the requirements of the Applicable Rules: (a) shall be issued by the City Manager or the director of the other applicable City Agency having responsibility for the issuance of such City Permits, such as the City Manager for commercial cannabis permits; (b) shall not require the approval of the Planning Commission, City Council or any other City board or commission; and (c) shall not require a public hearing.

4.2 Building Permits. It is understood by the Parties to this Development Agreement that, pursuant to the City's Building Code, building permit applications and issued building permits do not remain valid for the term of this Development Agreement, but only for the term set by the Building Code. Accordingly, the Developer shall have the right to file new building permit applications for the Development or any portion thereof where such previously approved building permit applications or issued building permits have expired, provided no Certificate of Occupancy has been issued with respect to the relevant portion of the Project. Any such new building permit applications filed for the Development shall be reviewed in accordance with this Development Agreement. However, any alternations or modifications to the Project or any separate portion thereof, which occur during the Term, but after the Project is completed and issued its initial Certificate of Occupancy, will be subject to whatever building codes and standards as are in effect at the time of application for building permits, as well as the fees then in effect.

5. <u>Developer's Obligations Regarding Property.</u>

5.1 <u>Operate Project</u>. Developer is obligated, after the Effective Date, to operate the Project as provided herein and in the Commercial Cannabis License, and a failure to do so is inconsistent with the City's Goals and shall be a breach of this Development Agreement.

5.2 <u>Permitted Uses and Development Standards</u>. Developer shall be authorized to develop, construct, and use the Site for Commercial Cannabis Activity consistent with the following license type (the "Authorized License"): Type 10 – Store Front Retail Dispensary.

Pursuant to this Agreement, Developer shall be permitted to use the Property consistent with the Authorized License for the Term of this Agreement and during the time Developer is applying for the Authorized License with the applicable State Licensing Authority. Developer shall begin operations of the Cannabis Business Project under the Authorized License within nine (9) months of the adoption of the operative ordinance approving this Agreement, unless Developer is prevented from doing so due to any event or circumstance set forth in Section 12 of this Agreement. Notwithstanding the foregoing, Developer is required to apply for and obtain the Authorized License from the State of California. If the State Licensing Authority does not grant the Authorized License to Developer, Developer shall immediately cease Commercial Cannabis Activity and any other operations on the respective site. Developer shall also, within thirty (30) days of receiving notice from the State Licensing Authority, notify City of the State Licensing Authority's denial or rejection of the Authorized License. In this situation, this Agreement shall terminate immediately. The Parties intend for this Agreement and the Conditional Use Permit to serve as the definitive and controlling documents for all subsequent actions, discretionary or ministerial, relating to development of the Site and the Cannabis Business Project.

5.3 <u>Components of Project</u>. Developer leases the Property and has developed and is legally operating the Project. However, various component businesses located on the Property may be owned by other entities to operate various other Businesses, including those related to the Project (the "Tenants"). The following will apply with respect to the Tenants and their relationship to Developer:

5.3.1 Any Tenant, as well as Developer, will be responsible for obtaining and maintaining any required license with respect to the nature of its business as required by state law and the ordinances of the City ("Licensing" or "Licenses").

5.3.2 Developer may lease portions of the Property to Tenants, which may operate one or more Businesses on the Property, including those related to the Project. All of the provisions of this Development Agreement pertain to Developer as an operator of a Business and apply equally to the Tenants if those Tenants operate a Business related to the Project, even if Developer is ultimately not an operator of the Project, and to Developer in its business role as the sublessor of the Property and/or the Project. Developer covenants that all Tenants conducting Businesses associated with the Project on the Property will be businesses subject to Licensing directly with the City in order to come under the purview of this Development Agreement and must comply with all City zoning and permit requirements. Developer covenants and agrees to include an express acknowledgement and assumption of each Tenant's respective obligations under this Development Agreement in a lease of any portion of the Project or Property to any Tenant conducting a Business specifically associated with the Project. Notwithstanding the foregoing, it is understood and agreed that portions of the Property may be leased to other businesses not associated with or involved in the Project as the leasing market may require, and that such businesses are not subject to this Development Agreement or the payment of Additional Revenues. Nothing in this paragraph is meant to modify the City's authority to regulate land use, enforce regulations, or otherwise regulate or provide any land use entitlement.

6. Exactions and City Development Fees.

6.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

"City Application Fees" means fees levied or assessed by the City and any City Agency to review and process applications for City Permits.

"City Development Fees" means any and all fees and assessments, other than City Application Fees, charged or required by the City or any City Agency as a condition of, or in connection with, the Project Approvals or any City Permits: (a) to defray, offset or otherwise cover the cost of public services, improvements or facilities; or (b) that are imposed for a public purpose.

"Exaction" means any exactions or mitigation measures, other than the payment of City Development Fees and City Application Fees, that are imposed by the City or any City Agency, as a condition of, or in connection with, the Project Approvals. "Exactions" includes, without limitation: (a) a requirement for the dedication of any portion of the Project Area to the City or any City Agency; (b) an obligation for the construction of any on-site or off-site improvements, including any Off-Site Improvements; (c) an obligation to provide services; or (d) the requirement to dedicate any easements, rights or privileges with respect to the Project or any portion thereof to the City or any City Agency.

6.2 Exactions.

6.2.1 All of the Exactions that Developer shall be required to perform or caused to be performed in connection with the development, construction, use and occupancy of the Project, during the term of the Agreement (collectively, the "Required Exactions"), and the timing requirements for the performance of such Required Exactions, are set forth in this Agreement. The Required Exactions include the following:

6.2.1.1 The Parties acknowledge and agree that this Agreement, and the Cannabis Business Project, confers substantial private benefits upon Developer that will place burdens upon City infrastructure, services, and neighborhoods.

Accordingly, the Parties intend to provide consideration to City to offset these impacts that commensurate with the private benefits conferred on Developer. Thus, Developer shall tender payment to the City as follows:

Effective Date	Amount Due
Within ten (10) days following each month of operation, following the commencement of Commercial Cannabis Activity	15% of Gross Receipts from Operations each month.
Within ten (10) days following the end of each quarter of operation, following the commencement of Commercial Cannabis Activity	A list of contributions made to community organizations, which are recommended by the Cannabis Committee and approved by Council, equaling 1% of Gross Receipts from Operations

6.2.1.2 Developer shall pay the City a monthly amount, to be determined at all times based on the tax structure promulgated in MMC 3.30.050. The first payment shall be due on the first month following the commencement of Commercial Cannabis Activity. The monthly amount shall be determined based on gross receipts. Developer shall file an applicable statement that complies with the California State Board of Equalization, California Department of Tax and Fee Administration, or either's successor agency (the "State Taxing Authority") for sales tax purposes showing the true and correct amount of Gross Receipts from Operations of the Cannabis Business Project during the applicable time period. Developer shall provide a copy of such statement to City upon request by City. Upon request of the City, Developer shall allow City staff to independently verify the Developer's gross receipts, provided that, such verification shall be supervised by Developer and such verification shall be consistent with California law. In addition to any other remedies, failure to permit City staff to verify Developer's gross receipts shall be grounds for the City to terminate this Agreement.

6.2.1.3 Developer shall pay to the City an amount of seven thousand five hundred dollars ($7,500 USD) to be utilized on for the City's costs to process the Developer's application(s) relating to its proposed commercial cannabis business. Should the restricted funds be exhausted prior to the City completing its processing of the application(s), Developer shall pay an additional amount to the City sufficient to process the application(s). The restricted funds shall be paid in full by Developer on or before 90 days after approval of this Agreement. Any excess payment from the Developer shall be returned by the City within thirty (30) calendar days after all processing costs have been satisfied. City shall provide Developer with an itemized accounting for City's costs on a monthly basis.

6.2.1.4 Developer shall pay Required Exactions and fees set forth in Exhibit "D." In addition, the Required Exactions include, without limitation, all Conditions of Approval imposed by the City, to fully mitigate potential adverse impacts resulting from, and reasonably related to, the development of the Project. In the event that the federal government legalizes cannabis and Developer's regulatory costs increase, City and Developer agree to negotiate in good faith an adjustment to the Required Exactions and fees set forth in Exhibit "D".

6.2.2 Except for the Required Exactions and fees listed in this Agreement, no Exaction shall be imposed by the City or any City Agency during the Term of this Agreement in connection with: (a) the development, construction, use or occupancy of the Project; or (b) any applications filed for any City Permit for the development, construction, use or occupancy of the Project or any portion thereof.

6.3 City Development Fees.

6.3.1 All of the City Development Fees that Developer shall be required to pay to the City and all City Agencies in connection with the development, construction, use and occupancy of the Project (collectively, the "Required Development Fees"), and the timing requirements for the payment of such Required Development Fees, if any, shall be agreed upon by the Parties after Developer submits an application for a building permt.

6.3.2 Notwithstanding the provisions of Section 6.3.1, Developer shall be responsible for paying: (a) any fees that Developer is obligated to directly pay to any Federal, State, County or local agency (other than any City Agency) under applicable Federal, State, County or local law; and (b) any fees the City is legally required to collect for other State or Federal agencies pursuant to (i) State or Federal law, or (ii) any City agreement or City ordinance that the City is legally mandated or required to adopt or enter into to comply with State or Federal law or a judgment of a court of law, but only to the extent necessary to satisfy such compliance.

6.3.3 Except for the Required Development Fees listed on Exhibit "G" to this Agreement, or other fees identified in this Agreement, and any fees for a required building inspection or other required process for occupancy to be charged at the then current rate charged by the City to other developers, no City Development Fees shall be imposed by the City or any City Agency during the Term of this Agreement in connection with: (a) the development, construction, use or occupancy of the Project; or (b) any application filed for any City Permit for the development, construction, use or occupancy of the Project. After the Term of this Agreement, development and use of the Property shall comply with all laws, regulations, enactments (including taxes), ordinances, then currently in effect.

6.4 City Application Fees. Developer shall pay to the City the City Application Fees chargeable in accordance with the City's Fee Schedule that is in effect at the time the relevant application for a City Permit is made; provided that such City Application Fees are uniformly imposed by the City and any City Agency at similar stages of project development on all similar applications for development in the City.

7. Actions by City.

7.1 Other Governmental Permits. The City agrees to cooperate with Developer in Developer's endeavors to obtain permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project Area or portions thereof (such as, for example, but not by way of limitation, public utilities or utility districts and agencies having jurisdiction over transportation facilities and air quality issues) so long as the cooperation by the City will not require the City to exercise legislative action or incur any cost, liability or expense without adequate indemnity against or right of reimbursement therefore from Developer.

7.2 Cooperation in Dealing with Legal Challenge. If any action or other proceeding is instituted by a third party or parties, other governmental entity or official challenging the validity of any provision of this Agreement (collectively, a "Third Party Action"), the Parties shall cooperate in the defense of the Third-Party Action to the maximum extent reasonably possible under the circumstances unless otherwise required by law.

7.3 Indemnification.

7.3.1 Third-Party Actions. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, consultants, attorneys, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, damages and costs (including reasonable attorneys' fees, litigation expenses and administrative record preparation costs) arising from, resulting from, or in connection with any Third-Party Action (as hereinafter defined). The term "Third-Party Action" collectively means any legal action or other proceeding instituted by (i) a third party or parties or (ii) a governmental body, agency or official other than the City or a City Agency, that: (a) challenges or contests any or all of this Agreement, the Project Applications and Approvals, and the Project Approvals; or (b) claims or alleges a violation of CEQA or another law by the City Council; or (c) challenges or contests the grant, issuance or approval by the City of any or all of this Agreement, the Project Applications and Approvals, and the Project Approvals. Developer's obligations under this Section 7.3.1 shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties forfeitures, costs or damages caused solely by the active negligence or willful misconduct of the City or any of its officers, officials, employees, consultants, attorneys, agents or volunteers. The provisions of this Section 7.3.1 shall survive the termination of this Agreement.

7.3.2 Additional Claims. To the fullest extent permitted by law, Developer shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, consultants, attorneys, agents and volunteers ("City Indemnitees") from any and all loss, liability, fines, penalties, forfeitures, costs and damages, including but not limited to personal injury, death at any time, and property damage, and including further reasonable attorneys' fees, litigation and legal expenses incurred by the City Indemnitees or held to be the liability of the City Indemnitees (including plaintiff's or petitioner's reasonable attorney's fees if awarded, in connection with the City Indemnitee's defense of its actions in any proceeding) (collectively, "Losses") incurred by any City Indemnitees from any and all claims, demands and actions in law or equity (collectively, a "Claim"), whether in contract, tort or strict liability, resulting from, arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement; (ii) the performance of this Agreement; (iii) the issuance of the CUP, permits, licenses, or other entitlements related to commercial cannabis operations; or (iv) the City's granting, issuing or approving use of this Agreement. If any portion of a claim, demand or action in law gives rise to indemnification under this Agreement, Developer shall be responsible for indemnifying, holding harmless or defending the City consistent with the Indemnity Agreement between Developer and the City which shall be incorporated by reference herein. Developer's indemnification obligations under the proceeding portions of this paragraph shall apply regardless of whether the City Indemnitees are negligent, but shall not apply to any Losses caused solely by the gross negligence or willful misconduct of any City Indemnitees.

In addition, Developer shall indemnify, hold harmless and defend the City Indemnitees from any and all federal enforcement action(s) arising from (i) the execution of this Agreement, (ii) the issuance of the CUP, permits, licenses, or other entitlements, and/or (iii) any other entitlements or approvals by the City to operate the Developer's commercial cannabis business. Further, Developer shall indemnify, hold harmless and defend the City Indemnitees from any and all violation(s) of federal, state and/or local law by Developer, its officers, officials, employees, agents, subcontractors, independent contractors and volunteers.

If Developer should subcontract all or any portion of the work to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend the City Indemnitees in accordance with the terms of the two prior paragraphs of this Section. Notwithstanding the preceding sentence, any subcontractor who is a "design professional" as defined in Section 2782.8 of the California Civil Code shall, in lieu of indemnity requirements set forth in the two prior paragraphs of this Section, be required to indemnify, hold harmless and defend the City Indemnitees to the fullest extent allowed by law, from any and all Claims and Losses that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

7.3.3 Damage Claims. The nature and extent of Developer's obligations to indemnify, defend and hold harmless the City with regard to events or circumstances not addressed in Section 7.3.1 and 7.3.2 shall be governed by this Section 7.3.3. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, consultants, attorneys, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement or the performance of any or all work to be done by Developer or its contractors, agents, successors and assigns pursuant to this Agreement (including, but not limited to design, construction and/or ongoing operation and maintenance of any required Off-Site Improvements unless and until such Off-Site Improvements are dedicated to and officially accepted by the City). Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, consultants, attorneys, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, consultants, attorneys, agents or volunteers.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, consultants, attorneys, agents and volunteers in accordance with the terms of the preceding paragraph. The Developer further agrees that the use for any purpose and by any person of any and all of the streets and improvements required under this Agreement, shall be at the sole and exclusive risk of the Developer, at all times prior to final acceptance by the City of the completed street and other improvements, unless any loss, liability, fines, penalties, forfeitures, costs or damages arising from said use were caused by the active or sole negligence, or the willful misconduct, of the City or any of its officers, officials, employees, consultants, attorneys, agents or authorized volunteers.

Notwithstanding the preceding paragraph, to the extent that Subcontractor is a "design professional" as defined in section 2782.8 of the California Civil Code and performing work hereunder as a "design professional" shall, in lieu of the preceding paragraph, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, consultants, attorneys, agents and volunteers to the furthest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in Agreement, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, consultants, attorneys, agents or volunteers in the performance of this Agreement.

This Section 7.3 shall survive termination or expiration of this Agreement.		
Initials	Developer: ______	Owner/Landlord: ______

7.4 Insurance. Except for any Off-Site Improvements constructed pursuant to the terms of this Agreement (in which case insurance for the Off-Site Improvements shall be required through the date of the City's final formal acceptance of Off-Site Improvements constructed), from the Effective Date of this Agreement and at all times herein (the "Insurance Period"), Developer shall obtain and pay for and maintain in full force and effect all policies of comprehensive commercial general liability insurance described in this section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "B+ VII" in Best's Insurance Rating Guide. The following policies of insurance are required:

7.4.1 Commercial General Liability. Insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage and personal injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement),with limits of liability of not less than $2,000,000.00 per occurrence for bodily injury and property damage, $1,000,000.00 per occurrence for personal injury, $2,000,000.00 general aggregate and $2,000,000.00 aggregate for products and completed operations.

7.4.2 Commercial Automobile Liability. Prior to, and as a condition of, any Delivery Operations, Insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 B Any Auto), with combined single limits of liability of not less than $2,000,000.00 per accident for bodily injury and property damage.

7.4.3 Workers' Compensation. Insurance as required under the California Labor Code.

7.4.4 Employers' Liability. With minimum limits of liability of not less than $1,000,000.00 each employee incident, $1,000,000.00 policy limit.

In the event Developer purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above-described policies of insurance shall be endorsed to provide an unrestricted thirty (30) calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a ten (10) calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the Term of this Agreement, Developer shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Developer shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees, consultants, attorneys, and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Developer's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees, consultants, attorneys, and volunteers. Developer shall have furnished City with the certificate(s) and applicable endorsements for all required insurance prior to start of construction of any phase of development. Developer shall furnish City with copies of the actual policies upon the request of City's City Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the Insurance Period, Developer fails to maintain the required insurance in full force and effect, the City Engineer, or his/her designee, may order that the Developer, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. The insurance requirements set forth in this Section 7.4 are material terms of this Agreement.

If Developer should hire a general contractor to provide all or any portion of the services or work to be performed under this Agreement, Developer shall require the general contractor to provide insurance protection in favor of City, its officers, officials, employees, consultants, attorneys, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the general contractor's certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the general contractor.

If the general contractor should subcontract all or a portion of the services or work to be performed under this Agreement to one or more subcontractors, Developer shall require the general contractor to require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, consultants, attorneys, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that each subcontractor shall be required to pay for and maintain Commercial General Liability insurance with limits of liability of not less than $1,000,000.00 per occurrence for bodily injury and property damage, $1,000,000.00 per occurrence for personal injury, $2,000,000.00 aggregate for products and completed operations and $2,000,000.00 general aggregate and Commercial Automobile Liability insurance with limits of liability of not less than less than $1,000,000.00 per accident for bodily injury and property damage. Subcontractors' certificates and endorsements shall be on file with the general contractor, Developer and City prior to the commencement of any work by the subcontractor. Developer's failure to comply with these requirements shall constitute an "Event of Default" as that term is defined in Section 10.1.

8. Benefits

8.1 Benefits to the City. The City has extensively reviewed the terms and conditions of this Agreement and, in particular, has specifically considered and approved the impact and benefits of the Project upon the regional welfare. The terms and conditions of this Agreement have been found by the City to be fair, just, and reasonable, and to provide appropriate benefits to the City. This Agreement and the development of the Project will serve the best interests, and the public health, safety, and welfare of the residents and invitees, of the City and the general public. This Agreement will help provide effective and efficient development of any Off-Site Improvements and other Required Exactions in the vicinity of the Project Area; help maximize effective utilization of resources within the City; increase City tax revenues; and provide other substantial public benefits to the City and its residents by achieving the goals and purposes of the Development Agreement Laws, the McFarland Municipal Code and the 2040 McFarland General Plan (as may have been amended).

8.2 Benefits to the Developer. The Developer has expended and will continue to expend substantial amounts of time and money on the planning and development of the Project. In addition, the Developer may expend substantial amounts of time and money for the construction of Off-Site Improvements, if required, and other Required Exactions and for the payment of the Required Development Fees in connection with the Project. The Developer would not make such expenditures except in reliance upon this Agreement. The benefit to the Developer under this Agreement consists of the assurance that the City will preserve the rights of Developer to develop the Project Area as planned and as set forth in the Project Approvals and this Agreement.

9. Annual Review of Compliance.

9.1 Annual Review. City and Developer shall annually review this Agreement, and all actions taken pursuant to the terms of this Agreement with respect to the Project in accordance with the provisions of California Government Code section 65865.1 and this Section 9. The Parties recognize that this Agreement and the Project Approvals and City Permits referenced herein contain extensive requirements and that evidence of each and every requirement would be a wasteful exercise of the Parties' resources. Accordingly, Developer shall be deemed to have satisfied its duty of demonstration if it presents evidence satisfactory to the City of its good faith compliance, as that term is used in Government Code, section 65865.1, with the material provisions of this Agreement.

9.2 Developer Report. Not later than the first anniversary date of the Effective Date, and not later than each anniversary date of the Effective Date thereafter during the Term, Developer shall apply for annual review of this Agreement. Developer shall submit with such application a report to the City Manager describing Developer's good faith compliance with the terms of this Agreement during the preceding year (the "Developer Report"). The Developer Report shall include a statement that the report is submitted to City pursuant to the requirements of California Government Code section 65865.1. Additionally, as part of the Developer Report, Developer shall include a statement and evidence in support thereof that Developer has complied with the annual permit requirements of McFarland Municipal Code 19.04.060.

9.3 Finding of Compliance. Within thirty (30) days after Developer submits the Developer Report under Section 9.2, the City Manager shall review Developer's submission to ascertain whether Developer has demonstrated good faith compliance with the material terms of this Agreement. If the City Manager finds and determines that Developer has in good faith complied with the material terms of this Agreement, or does not determine otherwise within thirty (30) days after delivery of the Developer Report, the annual review shall be deemed concluded. If the City Manager initially determines that the Developer Report is inadequate in any respect, he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith compliance with the material terms of this Agreement. If the City Manager concludes that Developer has not demonstrated good faith compliance with the material terms of this Agreement, he or she shall so notify Developer prior to the expiration of the thirty (30) day period herein specified and prepare a staff report to the City Council with respect to the conclusions of the City Manager and the contentions of Developer with respect thereto (the "Staff Report").

9.4 Hearing Before City Council to Determine Compliance. Should City Manager determine that Developer has not demonstrated good faith compliance with the material terms of this Agreement, City Manager shall submit a Staff Report to the City Council. Thereafter, City Council shall conduct a noticed public hearing to determine the good faith compliance by Developer with the material terms of this Agreement. At least sixty (60) days prior to such hearing, the City Manager shall provide to the City Council, Developer, and to all other interested Persons requesting the same, copies of the Staff Report and other information concerning Developer's good faith compliance with the material terms of this Agreement and the conclusions and recommendations of the City Manager. At such public hearing, Developer and any other interested Person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the Staff Report on, or with respect or germane to, the issue of Developer's good faith compliance with the material terms of this Agreement. If, after receipt of any written or oral response of Developer, and after considering all of the evidence at such public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms of this Agreement, then the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days after the date of the City Council's determination, and shall be reasonably related to the time adequate to bring Developer's performance into good faith compliance with the material terms of this Agreement. If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, subject to Force Majeure pursuant to Section 12.1, then the City Council may by subsequent noticed public hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), Terminate or modify this Agreement, or take such other actions as may be specified in the Development Agreement

Laws. Any notice to Developer of a determination of noncompliance by Developer hereunder, or of a failure by Developer to perfect the areas of noncompliance hereunder, shall specify in reasonable detail the grounds therefor and all facts demonstrating such noncompliance or failure, so that Developer may address the issues raised in the notice of noncompliance or failure on a point-by- point basis in any hearing held by the City Council hereunder.

9.5 Meet and Confer Process. If either the City Manager or the City Council makes a determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, the City Manager and/or designated City Council representatives may initiate a meet and confer process with Developer pursuant to which the Parties shall meet and confer in order to determine a resolution acceptable to both Parties of the basis upon which the City Manager or City Council has determined that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. If, as a result of such meet and confer process, the Parties agree on a resolution on the basis related to the determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, the results and recommendations of the meet and confer process shall be presented to the City Council for review and consideration at its next regularly scheduled public meeting, including consideration of such amendments to this Agreement as may be necessary or appropriate to effectuate the resolution achieved through such meet and confer process. Developer shall be deemed to be in good faith substantial compliance with the material terms of this Agreement, only upon City Council acceptance of the results and recommendations of the meet and confer process.

9.6 Certificate of Compliance. If the City Manager (or the City Council, if applicable) finds good faith substantial compliance by Developer with the material terms of this Agreement, the City Manager shall issue a certificate of compliance within ten (10) days thereafter, certifying Developer's good faith compliance with the material terms of this Agreement through the period of the applicable annual review. Such certificate of compliance shall be in recordable form and shall contain such information as may be necessary in order to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record the certificate of compliance in the Official Records.

9.7 Effect of City Council Finding of Noncompliance; Rights of Developer. If the City Council determines that Developer has not substantially complied in good faith with the material terms of this Agreement pursuant to Section 9.4 and takes any of the actions specified in Section 9.4 with respect to such determination of noncompliance, Developer shall have the right to contest any such determination of noncompliance by the City Council pursuant to a legal action filed in accordance with Section 16.5.

9.8 City Costs. Developer shall reimburse the City for all of the City's reasonable costs, (including but not limited to, staff time, reasonable attorneys' fees, and administrative costs) incurred in connection with Sections 9.1 through 9.8 of this Agreement. Pursuant to this section, Developer shall remit a deposit of Two Thousand Dollars

($2,000.00) to the City at the time of submission of the required Developer Report. If the deposit is insufficient to reimburse the City, the City may submit an invoice to Developer, who shall render payment to the City within thirty (30) days of receiving an invoice from the City for its costs. Any excess monies deposited by Developer to the City pursuant to this Section 9.8 shall be returned to Developer by the City within thirty (30) days after issuance of the certificate of compliance or completion of any of the actions set forth in Section 9.7 of this Agreement.

10. Events Of Default; Remedies; Estoppel Certificates.

10.1 Events of Default.

10.1.1 The failure by a Party to perform any material term or provision of this Agreement (including but not limited to the failure of a Party to approve a matter or take an action within the applicable time periods governing such performance under this Agreement) shall, subject to the provisions of this Agreement, constitute an "Event of Default", if: (a) such defaulting Party does not cure such failure within thirty (30) days following delivery of a Notice (as hereinafter defined) of default from the other Party ("Notice of Default"), where such failure is of a nature that can be cured within such thirty (30) day period; or (b) where such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting Party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any Notice of Default given hereunder shall specify in reasonable detail the nature of the failures in performance by the defaulting Party and the manner in which such failures of performance may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

10.1.2 Any Notice of Default to the defaulting Party pursuant to Section 10.1.1 shall satisfy the requirements of Section 15 of this Agreement and shall include a provision in at least fourteen face bold type substantially as follows: "YOU HAVE FAILED TIMELY TO PERFORM OR RENDER AN APPROVAL OR TAKE AN ACTION REQUIRED UNDER THE DEVELOPMENT AGREEMENT: [SPECIFY IN DETAIL]. YOUR FAILURE TO COMMENCE TIMELY PERFORMANCE AND COMPLETE SUCH PERFORMANCE AS REQUIRED UNDER THE AGREEMENT OR RENDER SUCH APPROVAL TO TAKE SUCH ACTION WITHIN THIRTY (30) DAYS AFTER THE DATE OF THIS NOTICE SHALL ENTITLE THE UNDERSIGNED TO TAKE ANY ACTION OR EXERCISE ANY RIGHT OR REMEDY TO WHICH IT IS ENTITLED UNDER THE AGREEMENT AS A RESULT OF THE FOREGOING CIRCUMSTANCES."

10.2 Remedies. Upon the occurrence of an Event of Default, each Party shall have the right, in addition to all other rights and remedies available under this Agreement, to: (a) bring any proceeding in the nature of specific performance, injunctive relief or mandamus; and/or (b) bring any action at law or in equity as may be permitted by laws of the State of California or this Agreement. In no event shall either Party be entitled to damages against the other Party based on the other Party's Breach, except for recovery by the City of accrued but unpaid Exactions as defined in this Agreement.

10.3 Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of any failure of performance, including an Event of Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other action or inaction, or cover any other period of time, other than any action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent action or inaction. Nothing in this Agreement shall limit or waive any other right or remedy available to a Party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

10.4 Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such other Party to certify in writing: (a) that this Agreement is in full force and effect and a binding obligation of the Parties; (b) that this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; (c) to the knowledge of such other Party, that neither Party has committed an Event of Default under this Agreement, or if an Event of Default has to such other Party's knowledge occurred, to describe the nature of any such Event of Default; and (d) such other certifications that may be reasonably requested by the other Party or a mortgagee. A Party receiving a request hereunder shall execute and return such certificate within twenty (20) days following the receipt thereof, and if a Party fails so to do within such twenty (20) day period, the information in the requesting Party's notice shall conclusively be deemed true and correct in all respects. The City Manager, as to the City, shall execute certificates requested by Developer hereunder. Each Party acknowledges that a certificate hereunder may be relied upon by Transferees (as hereinafter defined) and mortgagees. No Party shall, however, be liable to the requesting Party, or other Person requesting or receiving a certificate hereunder, on account of any information therein contained, notwithstanding the omission for any reason to disclose correct and/or relevant information, but such Party shall be estopped with respect to the requesting Party, or such third Person, from asserting any right or obligation, or utilizing any defense, which contravenes or is contrary to any such information.

11. Transfers.

11.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

"Affiliate" means any Person directly or indirectly Controlling, Controlled by or under Common Control with Developer and/or Property Owner.

"Control" means the ownership (direct or indirect) by one Person of an interest in the profits and capital and the right to manage and control the day to day affairs of another Person. The term "Control" includes any grammatical variation thereof, including "Controlled" and "Controlling".

"Common Control" means that two Persons are both controlled by the same other Person.

"Person" means an individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

"Transfer" means the sale, assignment, or other transfer by Developer of this Agreement, or any right, duty or obligation of Developer under this Agreement, including by foreclosure, trustee sale, or deed in lieu of foreclosure, under a mortgage, but excluding: (a) a dedication of any portion of the Project Area to the City or another governmental agency; (b) a mortgage; (c) ground leases, leases, subleases, licenses and operating agreements entered into by Developer with tenants or occupants of the Project for occupancy of space in any buildings or improvements (together with any appurtenant tenant rights and controls customarily included in such leases or subleases) in the Project, and any assignment or transfer of any such ground lease, lease, sublease, license or operating agreement by either party thereto; (d) any sale of a building pad and surrounding area in the Project Area to a future retail or restaurant occupant (or its affiliated entity) for the intended purpose of the development and occupancy of a building or improvement thereon; and (e) any collateral assignment of this Agreement to a mortgagee.

"Transferee" means the Person to whom a Transfer is effected.

11.2 Conditions Precedent to Developer Right to Transfer. Except as otherwise provided in this Section 11, Developer shall only have the right to effect a Transfer subject to and upon fulfillment of the following conditions precedent:

11.2.1 No Event of Default by Developer shall be outstanding and uncured as of the effective date of the proposed Transfer, unless the City Council has received adequate assurances satisfactory to the City Council that such Event of Default shall be cured in a timely manner either by Developer or the Transferee under the Transfer.

11.2.2 Prior to the effective date of the proposed Transfer, Developer or the proposed Transferee has delivered to the City an executed and acknowledged assignment and assumption agreement (the "Assumption Agreement") in recordable form. Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be Transferred to the proposed Transferee; (b) the obligations of Developer under this Agreement that the proposed Transferee will assume; and (c) the proposed Transferee's acknowledgment that such Transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed Transferee, and shall provide that the Transferee assumes the obligations of Developer in connection with the proposed Transfer. The Assumption

Agreement shall be recorded in the Official Records concurrently with the consummation of the Transfer.

11.2.3 Prior to the effective date of the proposed Transfer, City consents in writing to the Transfer. City's consent shall not be unreasonably withheld or denied. Factors the City may consider in determining whether to consent to the transfer include the financial capacity of the proposed Transferee to comply with all of the terms of the Agreement and the history, if any, of compliance of Transferee, its principals, officers or owners with the provisions of federal or state law, the McFarland Municipal Code or agreements with the City relating to development projects within the City of McFarland, and whether the Transferee has sought, qualified for, and obtained a commercial cannabis permit as required by Chapter 19.04 of the McFarland Municipal Code.

11.3 Transfer to Affiliate. Notwithstanding the provisions of Section 11.2, Developer shall have the right to Transfer all of its rights, duties and obligations under this Agreement to an Affiliate of Developer. Such Affiliate shall become a Transferee upon: (a) the acquisition by such Affiliate of the affected interest of Developer under this Agreement; (b) delivery to the City of an Assumption Agreement executed by the Affiliate pursuant to which the Affiliate assumes, from and after the date such Affiliate so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement and (c) delivery to the City of documents and other evidence establishing the Affiliate's financial capacity to meet all of its duties and obligations under this Agreement. By virtue of its demonstrated status as an Affiliate of Developer and recognizing that Transfers to Affiliates will facilitate Developer's ability to develop the Project consistent with this Agreement, the City hereby consents to any Transfer to an Affiliate in accordance with this Section and no further consent of the City shall be required for any Transfer by Developer to an Affiliate.

11.4 Mortgagee as Transferee. No mortgage (including the execution and delivery thereof to the mortgagee) shall constitute a Transfer. A mortgagee shall be a Transferee only upon: (a) the acquisition by such mortgagee of the affected interest of Developer encumbered by such mortgagee's mortgage; and (b) delivery to the City of an Assumption Agreement executed by the mortgagee pursuant to which the mortgagee assumes, from and after the date such mortgagee so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. No further consent of the City shall be required for any such Transfer to a mortgagee.

11.5 Effect of Transfer. A Transferee shall become a Party to this Agreement only with respect to the interest transferred to it under the Transfer and then only to the extent set forth in the Assumption Agreement delivered under Sections 11.2.2, 11.3 and 11.4. When and if Developer Transfers all of its rights, duties and obligations under this Agreement in accordance with Section 11.2, 11.3 or 11.4, Developer shall be released from any and all obligations accruing after the date of the Transfer under this Agreement. If Developer effectuates a Transfer as to only some but not all of its rights, duties and obligations under this Agreement, Developer shall be released only from its obligations accruing after the date of the Transfer which the Transferee assumes in the Assumption Agreement.

11.6 No Transfer of Commercial Cannabis Permit. Notwithstanding any other provision of this Agreement, a commercial cannabis permit shall not be subject to the transfer process, and prior to any transfer Transferee must seek, qualify for, and obtain a commercial cannabis permit as required by Chapter 19.04 of the McFarland Municipal Code.

12. Enforced Delay; Extension of Time of Performance; Excused Performance.

12.1 Except as otherwise provided by specific provisions of this Development Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to:

12.1.1 Force Majeure. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or failures to perform are due to pandemics, war, insurrection, strikes, walk-outs, riots, floods, earthquakes, civil unrest, the discovery and remediation of hazardous waste or significant geologic, hydrologic, archaeologic or paleontologic problems on the Project Area, fires, casualties, acts of God, shortages of labor or material, governmental restrictions imposed or mandated by governmental agencies or entities other than the City, enactment of conflicting state or federal statutes or regulations, judicial decisions, litigation not commenced by a Party to this Agreement claiming the enforced delay, or any other basis for excused performance which is not within the reasonable control of the Party to be excused. Causes for delay as set forth above are collectively referred to as "Force Majeure."

12.1.1.1 Notice of Force Majeure. If Notice (as hereinafter defined) of such delay or impossibility of performance is provided to a Party within thirty (30) days after the commencement of such delay or condition of impossibility, an extension of time for such cause shall not be unreasonably denied by such Party. The extension shall be for the period of the enforced delay, or longer as may be mutually agreed upon by the applicable Parties in writing. Any performance rendered impossible shall be excused in writing by the Party so notified.

12.1.2 Development Factors. Inability to secure necessary labor, materials or tools, strikes, lockouts, other labor disputes, or delays of any contractor, subcontractor, or supplier.

12.1.3 Extensions. An extension of time in writing for any of the causes set forth in this Section 12 above shall be granted for the period of the enforced delay if of a known duration, or longer as mutually agreed upon, or for a reasonable time as determined by the City if the parties cannot agree, which period shall commence to run from the time of commencement of cause.

13. Project Approvals Independent. Except to the extent otherwise recognized by CEQA, all City Permits which may be granted pursuant to this Agreement, and all Project Approvals which have been issued or granted by the City with respect to the Project Area and the Project, constitute independent actions and approvals by the City. If any provision

of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if this Agreement is Terminated for any reason, then such invalidity, unenforceability or Termination of this Agreement, or any part hereof, shall not affect the validity or effectiveness of any such City Permits or the Project Approvals. In such cases, such City Permits and Project Approvals will remain in effect pursuant to their own terms, provisions, and conditions of approval. As such, the City may place conditions of approval on all City Permits which may be granted pursuant to this Agreement, and Project Approvals which have been issued or granted by the City with respect to the Project Area and the Project, so long as such conditions are consistent with the terms of this Agreement.

14. Notices

14.1 Form of Notices; Addresses. All notices and other communications (the "Notices") required or permitted to be given by any Party to another Party pursuant to this Agreement shall be properly given only if the Notice is: (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 14.2; and (c) sent to the Party (to which it is addressed at the address set forth below (with a copy to the appropriate entity as indicated below) or at such other address as such Party (or the addressee required to be sent a copy) may hereafter specify by at least five (5) calendar days' prior to written notice being sent:

If to City:	City of McFarland Attn: City Manager 401 W. Kern Ave McFarland, CA 93250 Facsimile: (661) 854-0817
And to:	Hodges Law Group Attn: Nathan M. Hodges 1925 G Street Bakersfield, CA 93301
If to Developer:	OTC McFarland, LLC Attn: Norman Yousif 771 Jamacha Road, 358 El Cajon, CA 92019
And to:	Maddocks Law, P.C. Attn: Sean Maddocks 23 Corporate Plaza Dr., #150 Newport Beach, CA 92660
If to Landlord:	Guadalupe F. Garcia Diaz 641 Drake Avenue Fullerton, CA 93832

14.2 Methods of Delivery. Notices may be either: (a) delivered by hand; or (b) delivered by a nationally recognized overnight courier which maintains evidence of receipt. Notices shall be effective two on the date of personal delivery, or two (2) days after date of mailing.

15. General Provisions.

15.1 City's Reservation of Authority. The Parties acknowledge and agree that the intent of the Parties is that this Agreement be construed in a manner that protects the vested rights granted to Developer herein. Except for the limitations on the exercise by the City of its police power which are provided in this Agreement or which are construed in accordance with the immediately preceding sentence, the Parties further acknowledge and agree that: (a) the City reserves all of its police power and/or statutory or other legal powers or responsibilities; (b) the City reserves all of its authority to enact additional regulations, whether enacted by the City Council or the City Manager, relating to commercial cannabis business activities; and (c) this Agreement shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit the discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlement of use which require the exercise of discretion by the City or any of its officers or officials. This Agreement shall not be construed to limit the obligations of the City to comply with CEQA or any other federal or state law.

15.2 Amendment or Cancellation. Subject to meeting the notice and hearing requirements of section 65867 of the California Government Code, this Agreement may be amended from time to time, or canceled in whole or in part, by mutual written consent of the City and Developer, or their respective successors in interest in accordance with the provisions of section 65868 of the California Government Code.

15.3 Successor and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and any subsequent owners of all or any portion of the Project Area and their respective successors and assigns. Any successors in interest to the City shall be subject to the provisions set forth in sections 65865.4 and 65868.5 of the California Government Code.

15.4 Interpretation and Governing State Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objective and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, both Parties having been represented by counsel in the negotiation and preparation hereof. All legal actions brought to enforce the terms of this Agreement shall be brought and heard solely in the Superior Court of the State of California, County of Kern.

15.5 No Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other Person shall have any right of action based upon any provision of this Agreement.

15.6 Future Acquisitions. In the event that Developer or an affiliate of Developer acquires or obtains a legal or equitable interest in any portion of the Project Area other than the Project Area (the "After Acquired Land") during the Term of this Agreement, the City and Developer shall engage in good faith negotiations for a development agreement between the City and Developer pursuant to the Development Agreement Laws for the development of a portion of the Project on the After Acquired Land.

15.7 Attorneys' Fees. If either Party commences any action for the interpretation, enforcement, termination, cancellation or rescission hereof, or for specific performance of the breach hereof, the prevailing party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. Attorneys' fees under this Section shall include attorneys' fees on any appeal and any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

15.8 Limitation of Legal Acts. Except as provided in Section 15.7, in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement, provided that, City's limitation of liability in this Section 15.8 shall not apply to any gross negligence and/or willful misconduct caused by City on Developer's premises.

15.9 Validation. If so requested in writing by the Developer, the City agrees to initiate appropriate procedure under California Code of plans Procedure section 860 *et seq.*, in order to validate this Agreement, and the obligations thereunder. Any validation undertaken at the request of the Developer shall be at the sole cost of the Developer.

15.10 Successor Statutes Incorporated. All references to a statute or ordinance, shall incorporate any, or all, successor statute or ordinance enacted to govern the activity now governed by the statute or ordinance, noted herein to the extent, however, that incorporation of such successor statute or ordinance does not adversely affect the benefits and protections granted to the Developer under this Agreement.

15.11 Incorporation of Attachments. All recitals and attachments to this Agreement, including all exhibits referenced herein, and all subparts thereto, are incorporated herein by this reference.

15.12 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third-party beneficiary rights in any Person who is not a Party or a Transferee; and nothing in this Agreement shall limit or waive any rights Developer may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.

15.13 Not A Public Dedication. Except for Required Exactions specifically set forth in this Agreement and then only when made to the extent so required, nothing herein contained shall be deemed to be a gift or dedication of the Project Area or any buildings or improvements constructed in the Project, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Project Area as private property.

15.14 No Consideration to any Third Party. Each of the Parties warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial or other consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Party. For the purposes of this paragraph, third parties shall include any elected official, officer, employee, or agent of the City. This warranty includes each Party's assurance that it has not employed any licensed real estate broker or salesperson, or other person, licensed or unlicensed, to whom a commission or other form of compensation is due.

15.15 Independent Legal Advice/Interpretation of Agreement. Each Party represents and warrants the following; it has carefully read this Development Agreement, and in signing this Development Agreement, and agreeing to be bound by the same, it has received independent legal advice from legal counsel as to the matters set forth in this Development Agreement, or has knowingly chosen not to consult legal counsel as to the matters set forth in this Development Agreement, and it has freely signed this Development Agreement and agreed to be bound by it without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or its officers, agents, employees, or attorneys, except as specifically set forth in this Development Agreement, and without duress or coercion, whether economic or otherwise. This Development Agreement shall be interpreted as though prepared jointly and severally by both of the Parties.

15.16 Entire Agreement. This Development Agreement and the Exhibits therein contain the entire agreement between the Parties, and is intended by the Parties to completely state the Development Agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any Party in relation thereto, not expressly set forth in this Development Agreement, is null and void. Any amendment hereto is not valid unless signed by both parties.

15.17 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

15.18 Headings. Titles or headings of sections, paragraphs or provisions of this Development Agreement are provided as an aid and are to be considered part of the Agreement itself.

15.19 Counterparts. This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and each of which shall be deemed to be one and the same instrument when each Party signs each such counterpart.

15.20 Additional Documents. The Parties each agree to execute any additional forms, notices, applications, or other documents that are reasonably necessary to carry out the intent of this Development Agreement.

15.21 Days. Unless otherwise specified in this Agreement, the term "days" means calendar days.

SIGNATURES ARE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

Dated: ____________, 2023

OWNER/LANDLORD:
Guadalupe F. Garcia Diaz

By: ______________________________
Guadalupe F. Garcia Diaz

Dated: ____________, 2023

DEVELOPER:
OTC McFarland, LLC

By: ______________________________
Norman Yousif, Manager & CEO

Dated: ____________, 2023

DEVELOPER:
OTC McFarland, LLC

By: ______________________________
Norman Yousif, Manager & CEO

Dated: ____________, 2023

CITY OF MCFARLAND

By: ______________________________
Saul Ayon, Mayor

APPROVED AS TO FORM:

By: ______________________
Nathan Hodges, City Attorney

ATTEST:

By: ______________________
Francisca Alvarado, City Clerk

	City of McFarland **Commercial Cannabis Permit** **Application** **CCP #______** **Address: ____________ APN____________**	**401 W Kern Ave** **McFarland CA 93250** **661-792-3091** **www.mcfarlandcity.org**

Real Property Authorization Form
PROPERTY OWNER CONSENT FORM
(Section 3)
Commercial Cannabis Businesses

PROPERTY OWNER INFORMATION	
Name:	Guadalupe F. Garcia Diaz
Title:	Owner
Phone Number:	[redacted]
Mailing Address:	[redacted]
E-mail Address:	[redacted]
PREMISES INFORMATION	
Physical Address	981 FRONTAGE Rd. MCFARLAND, CA 93250
Tenant/Buyer Business:	OTC MCFARLAND, LLC
Name of Tenant/Buyer:	NORMAN YOUSIF

DECLARATIONS AND SIGNATURE
I hereby certify that I am the property owner of the premises referenced in the Premises Information section 3 of the application and authorized to complete this form. As the property owner, I acknowledge that the above mentioned tenant/buyer has the legal right to occupy the property and acknowledges and consents to the conduct of legal commercial cannabis activities on the property, including, but not limited to: cannabis cultivation, cannabis manufacturing, cannabis distribution, and cannabis delivery.

Signature must be notarized.

[redacted]

Signature

9/15/2023
Date

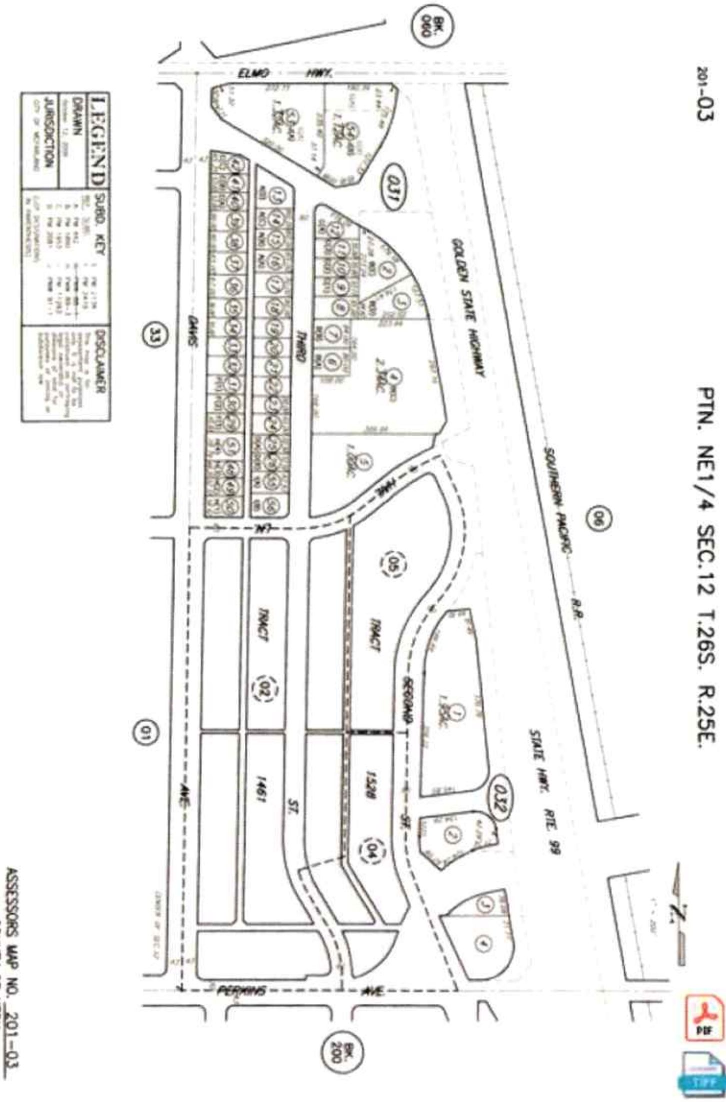
Fidelity National Title
PASSPORT

Assessor Map Report

Subject Property Location

Report Date: 09/29/2023
Order ID: R127841883

Property Address	981 FRONTAGE RD
City, State & Zip	MC FARLAND, CA 93250-1005
County	KERN COUNTY
Parcel Number	201-031-03-00-0



Download the map in PDF

Download the map in TIFF

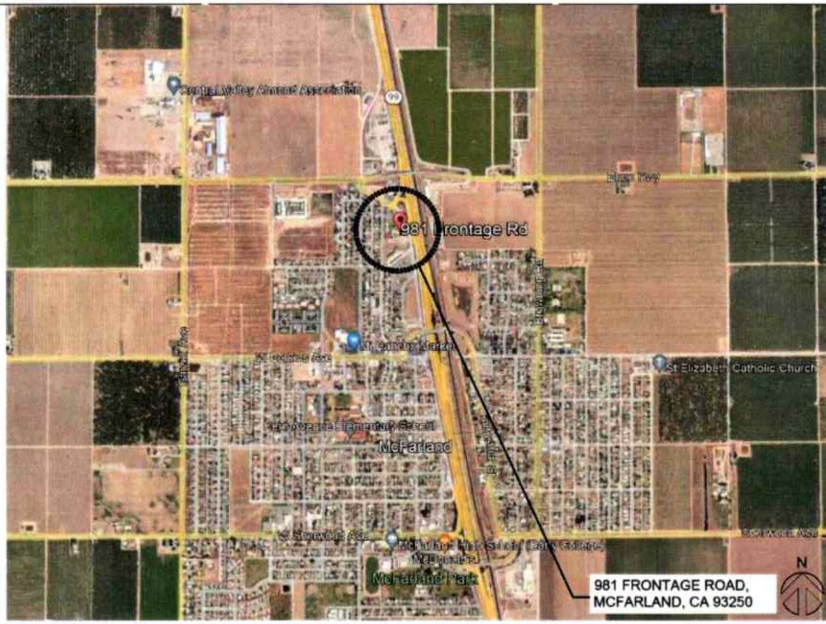
Disclaimer

Copyright

981 Frontage Road, McFarland, CA 93250

SEAN MADDOCKS
GREEN CONSULTING PARTNERS
23 CORPORATE PLAZA DR#150.
NEWPORT BEACH, CA 2660
TEL. (619) 955 9433

Kurt Gibbs AIA
3575 Long Beach Blvd
Long Beach CA, 90807
T: 562 981 2000
E: kurt@gibbs1934.com



Vicinity Map | 15

Site Map | 15

<u>ARCHITECTURAL</u>

A0.00	Cover Sheet
A1.01	Site Plan
A1.01A	Site Plan - Floor Plan
A2.00	Existing Floor Plan
A2.01	Proposed Floor Plan
A9.00	Supporting Documents

Drawing List | 4

SITE ADDRESS	981 FRONTAGE ROAD. MCFARLAND, CA
ZIP	93250
ASSESSOR'S PARCEL NUMBER	201-031-03-6
LAND USE	201
LOT SIZE	16,989 SF
LEGAL DESCRIPTION	PM 1890 LOT D *PAR MAP 1890 LOT D

AREA BREAKDOWN:	
LOBBY	-127 SF
RETAIL	- 932 SF
SECURE CHECK-IN	- 50 SF
EMPLOYEE BREAK AREA	- 160 SF
ADA RESTROOMS	- 138 SF
VAULT	- 96 SF
OFFICE	- 203 SF
STORAGE	- 210 SF
HALLWAYS	- 128 SF
TOTAL	**2,848 SF**

Project Information | 2

OWNER: GREEN CONSULTING PARTNERS
23 CORPORATE PLAZA DR#150.
NEWPORT BEACH, CA 2660
TEL. (619) 955 9433
CONTACT: NORM YOUSIF

ARCHITECT: GIBBS ARCHITECTS
3575 LONG BEACH BLVD.
LONG BEACH, CA 90807
TEL: (562) 981-2000
CONTACT: KURT GIBBS

Project Team | 3a

Project Scope:
Work shall include but not limited to the following:
- 540 sf addition to an existing 1,506 sf retail building
- tenant improvement

Scope Of Work | 1B

2023 California Building Code

Applicable Building Code Information | 1

Revisions		
No.	Issue	Date
1		

Project Number:

Date: 14 September 2023

File:

Scale: Scale As Noted

Sheet Title: **Cover Sheet**

Drawing Number: **A0.00**

981 Frontage Road, McFarland, CA 93250

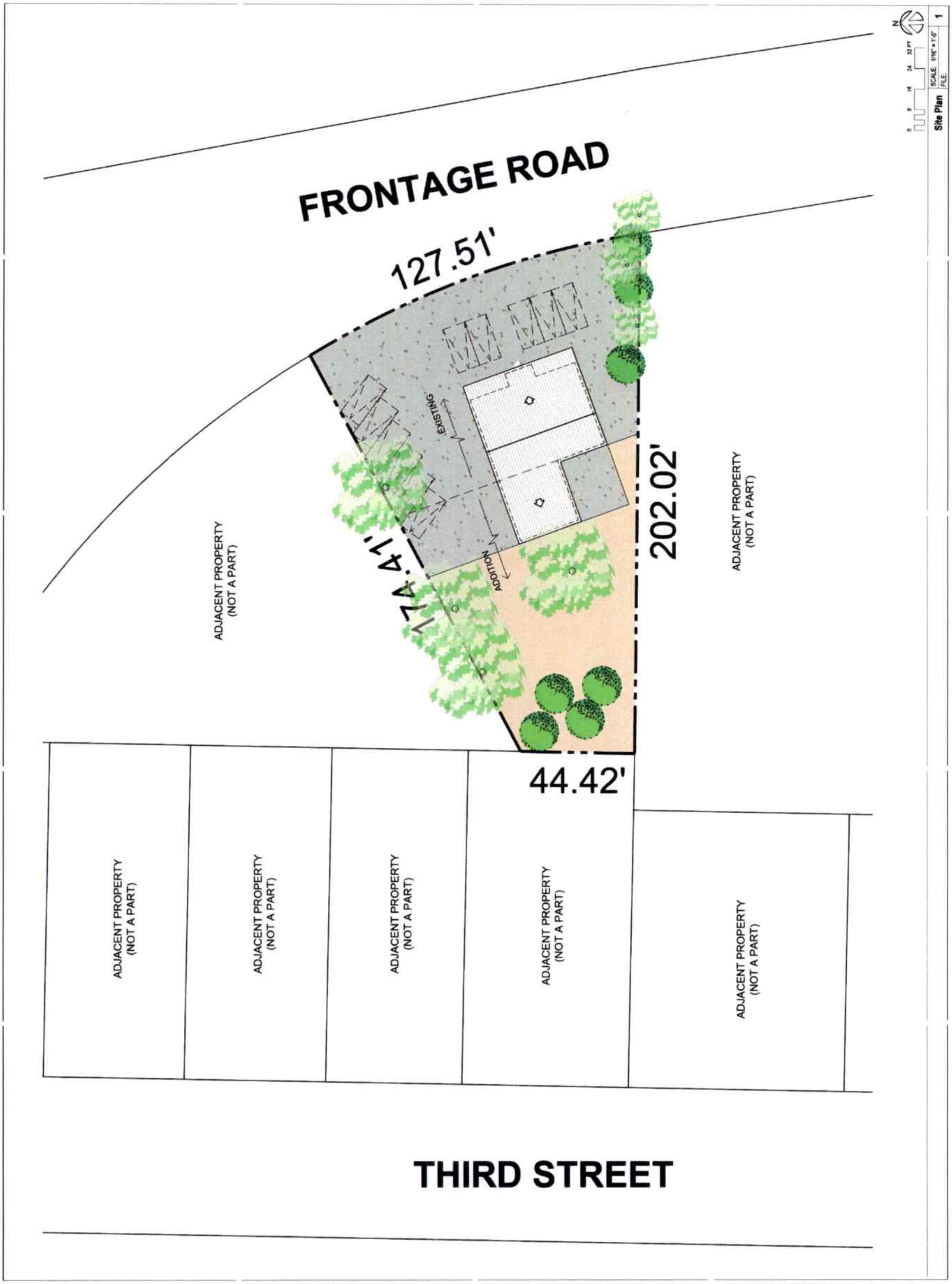
GIBBS

Date: 14 September 2023

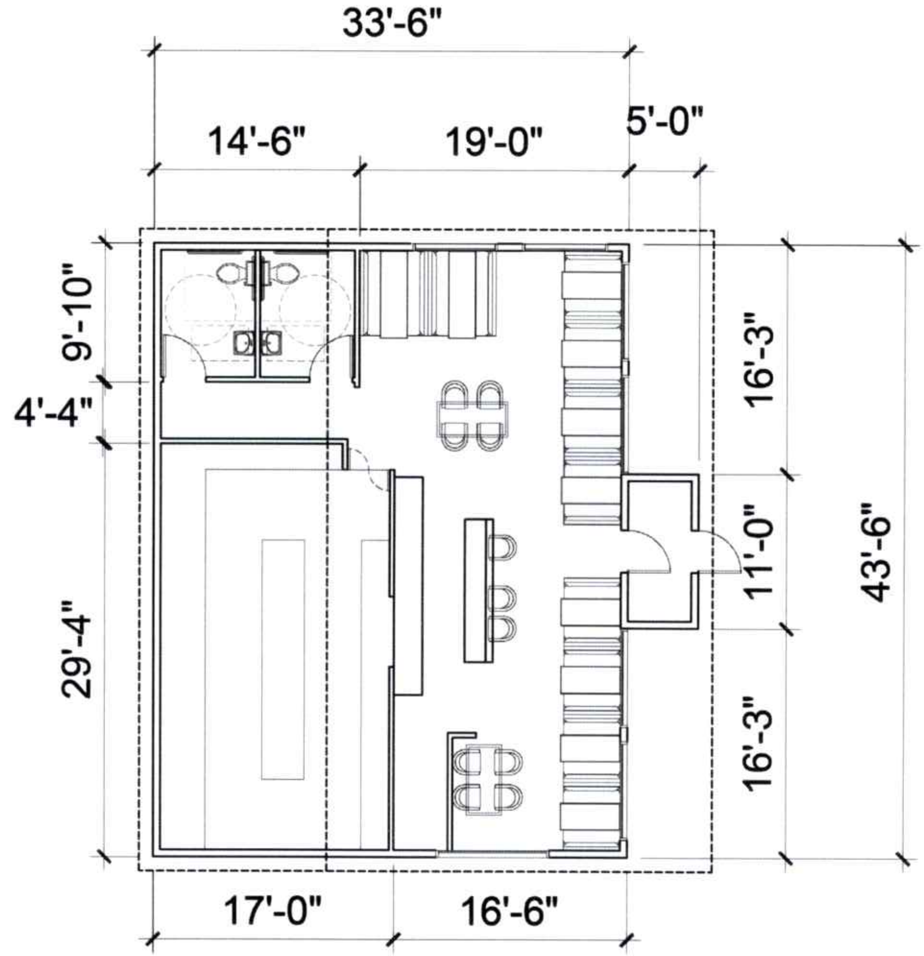
Scale: Scale As Noted

Sheet Title: Site Plan

Drawing Number: A1.00




981 Frontage Road,
McFarland, CA 93250
OFF THE CHARTS
GIBBS
14 September 2023
Scale As Noted
Site Plan
A1.01A
FRONTAGE ROAD
127.51'
202.02'
174.41'
44.42'
EXISTING
ADDITION
ADJACENT PROPERTY
(NOT A PART)
THIRD STREET
Site Plan
1



Existing Floor Plan
SCALE: 1/4" = 1'-0"
FILE:
1

981 Frontage Road,
McFarland, CA 93250

OFF THE CHARTS

SEAN MADDOCKS
GREEN CONSULTING PARTNERS
23 CORPORATE PLAZA DR#150
NEWPORT BEACH, CA 2660
TEL (619) 955 9433

GIBBS

Kurt Gibbs AIA

Revisions

No.	Issue	Date
1		

Project Number:

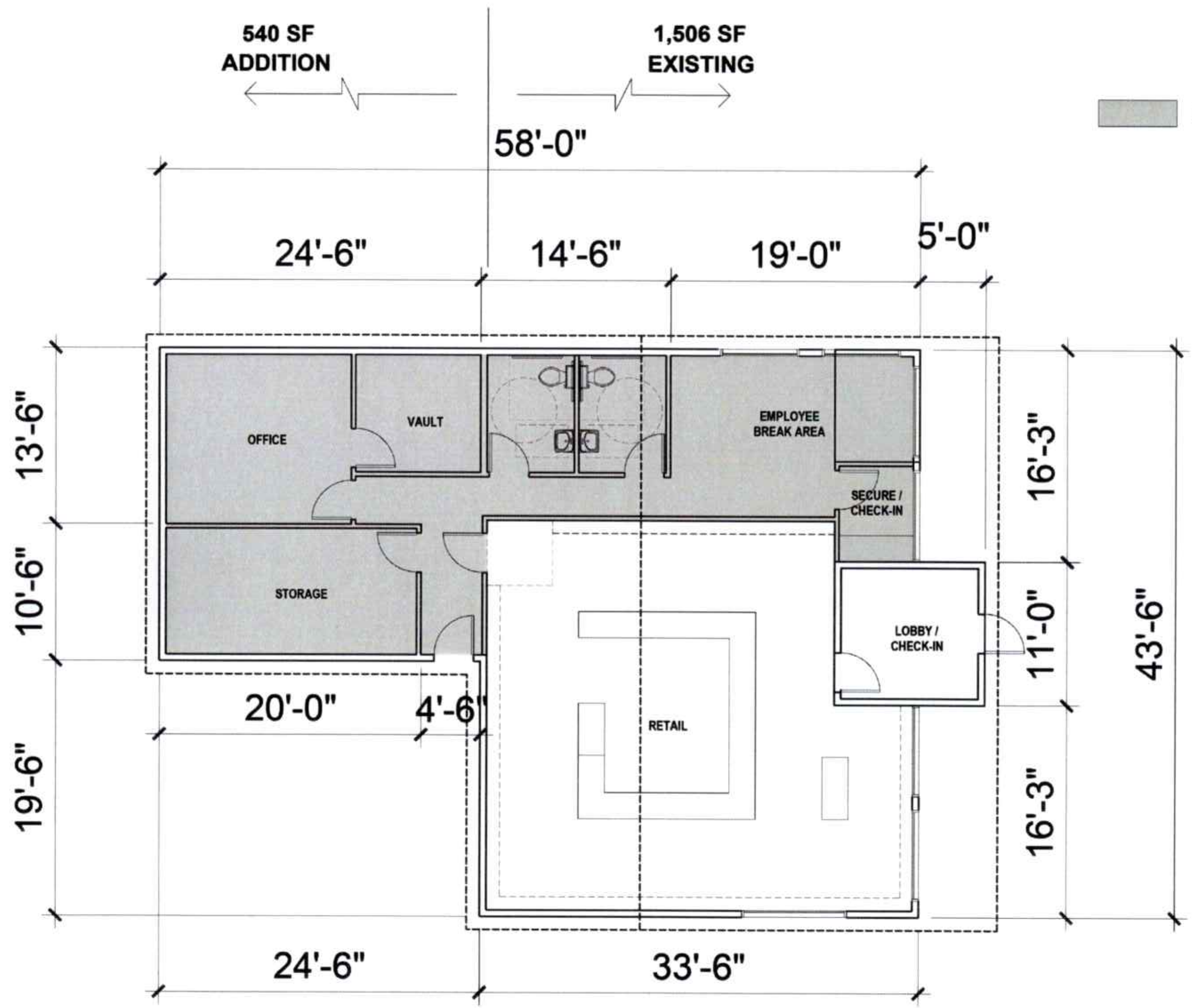
Date: 14 September 2023

File:

Scale: Scale As Noted

Sheet Title: Existing Floor Plan

Drawing Number: A2.00



AREA BREAKDOWN:

LOBBY	-127 SF
RETAIL	- 932 SF
SECURE CHECK-IN	- 50 SF
EMPLOYEE BREAK AREA	- 160 SF
ADA RESTROOMS	- 138 SF
VAULT	- 98 SF
OFFICE	- 203 SF
STORAGE	- 210 SF
HALLWAYS	- 128 SF
TOTAL	**2,046 SF**

Proposed Floor Plan | SCALE: 1/4" = 1'-0" | FILE: | 1

981 Frontage Road,
McFarland, CA 93250

OFF THE CHARTS

SEAN MADDOCKS
GREEN CONSULTING PARTNERS
23 CORPORATE PLAZA DR#150
NEWPORT BEACH, CA 2660
TEL (619) 955 9433

GIBBS ARCHITECTURE

Kurt Gibbs AIA
3676 Long Beach Blvd
Long Beach CA, 90807
T: 562.981.2000
E: kurt@gibbs1934.com

Revisions

No.	Issue	Date
1		

Project Number:

Date: 14 September 2023

File:

Scale: Scale As Noted

Sheet Title: Proposed Floor Plan

Drawing Number: **A2.01**

EXHIBIT D

Effective Date	Amount Due
Within ten (10) days following each month of operation, following the commencement of Commercial Cannabis Activity	15% of Gross Receipts from Operations each month.
Within ten (10) days following the end of each quarter of operation, following the commencement of Commercial Cannabis Activity	A list of contributions made to community organizations, which are recommended by the Cannabis Committee and approved by Council, equaling 1% of Gross Receipts from Operations