

February 15, 2024

MEMO TO: Stanislaus County Planning Commission

FROM: Department of Planning and Community Development

**SUBJECT: CANCELLATION OF THE DEVELOPMENT AGREEMENT FOR USE PERMIT
AND DEVELOPMENT AGREEMENT NO. PLN2018-0149 – BYNATE**

PROJECT DESCRIPTION

This is a request to cancel the adopted Development Agreement (DA) for a commercial cannabis retail business, located at 21931 State Highway 33, between Fink Road and Ike Crow Road, in the Crows Landing area. The DA was approved by the Board of Supervisors on August 13, 2019 as part of the Use Permit (UP) approval allowing for the use to be conducted. The cancellation of the adopted DA is due to the operator's nonpayment of fees required under the terms of the DA.

A detailed description of the approved UP and adopted DA (UP & DA No. PLN2019-0149 – Bynate) are provided in the August 13, 2019 Board of Supervisors Report, which is available online at: <https://www.stancounty.com/bos/agenda/2019/20190813/PH02.pdf>.

DISCUSSION

As required by Section 6.78.060(A)(2) of the Stanislaus County Code, prior to operating in the County, permittees of each commercial cannabis activity are required to enter into a DA, as specified in Title 22 of the Stanislaus County Code, with the County setting forth the terms and conditions under which the commercial cannabis activity will operate. Without a valid DA, commercial cannabis permittees cannot operate within the County. Title 22 specifies that the Planning Commission shall consider a DA and provide a recommendation to the Board of Supervisors. The recommendation shall include the Planning Commission's determination on whether or not the DA:

- a. Is consistent with the General Plan and any applicable specific plan.
- b. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is or will be located.
- c. Is in conformity with and will promote public convenience, general welfare, and good land use practice.
- d. Will be detrimental to health, safety, and general welfare.

- e. Will adversely affect the orderly development of property or the preservation of property values.
- f. Will promote and encourage the orderly development of the proposed project by providing a greater degree of requisite certainty.

The DA includes a requirement for Bynate to pay two separate fee types: one is the Community Benefit Rate (CBR) fee, which varies in amount based on the type and quantity of the proposed commercial cannabis activities and is collected for the purpose of funding the enforcement of illegal cannabis activities throughout the County; and the second is the Community Benefit Contribution (CBC) fee, which varies in amount based on the projected revenues of the operation and is collected for the purpose of funding local community charities and public improvement projects. Bynate's Community Benefit Rates were required to be paid in quarterly installments and included the following fee structures for the permitted commercial cannabis retail activity (see Attachment B – *Recorded Development Agreement*):

- Retail activities – ranged from \$105,000 to \$120,000 annually over the first five years or 8% of gross receipts, whichever is greater.

Prior to 2023, Bynate had paid a total of \$748,682 in CBR fees for retail activities. Bynate's CBC ranged from \$10,500 to \$12,000 over the five-year DA period. Although no longer collected after the program was terminated by the Board of Supervisors in 2022, Bynate has paid in full the \$26,500 in CBC fees owed to the County.

At the direction of the Board of Supervisors in 2022, collection of the CBC fee ceased. In October of 2023, the Board approved a new contribution program that allowed commercial cannabis operators to meet their CBC obligations using one of the following methods: 1) distribute funds directly to entities affiliated with nonprofits and education; 2) completion of improvements to their local area; or 3) a minimum payment to the County of \$5,000 to be directed toward impacts of cannabis use into the community. Bynate would be still subject to compliance with the CBC requirements even if the DA is cancelled.

As part of their first annual inspection, required by the adopted DA to be conducted once approved operations have commenced, it was determined that Bynate had not completed conditions of approval associated with UP PLN2019-0149 within the required timeframe and their UP was deemed expired, requiring reapplication to continue operation. Bynate submitted a new use permit application on October 7, 2022. Following applying for a new use permit, Bynate submitted a request to transfer their DA to a new business owner, John Montgomery, on March 2, 2023. The use permit was placed on hold during this period to allow for completion of the DA transfer, however, the transfer process was never completed and the original members of Bynate remain owner of the DA for the retail business.

Starting in Quarter 1 of 2023, Bynate's CBR payments to the County ceased, with the exception of one partial payment made in Quarter 2 of 2023. To date, Bynate owes the County a total of \$118,245.

In accordance with Section 15 – Default of the adopted DA, the operator has been notified of their failure to pay for each quarter (see Attachment C – *Notices to the Operator*), and is now in

a state of default, having been referred to the Planning Director for action in accordance with Section 15.6.2 – Termination or Modification of the Development Agreement and County Code Section 22.08.020 – Cancellation by the County. In accordance with Title 22 of the Stanislaus County Code, and Government Code Section 65865.1, a DA may be cancelled by the County provided a public hearing is noticed and held by both the Planning Commission and the jurisdiction’s Legislative Body (Board of Supervisors) in conformance with Government Code Sections 65090 and 65091. As stated in Section 22.08.020 of the County Code, at the public hearing the operator shall demonstrate compliance with the terms of the DA. If compliance is not shown, the Planning Commission shall recommend to the Board of Supervisors to begin cancellation proceedings or recommend new terms and conditions to remedy the noncompliance. Once presented, the Board of Supervisors has the authority to cancel the DA immediately or impose new terms and conditions intended to remedy the noncompliance.

Based on the failure to make full quarterly payments as required by the provisions of the DA, and with no attempt to remedy the debt in full in the interim periods, staff recommends that the Planning Commission recommend that the Board of Supervisors cancel the DA for Bynate subject to closure within 30 days of repeal of the ordinance, No. C.S. 1250. Outstanding fees owed to the County by the operator including additional fees for Quarter 1 of 2024, would still be required to be paid unless other arrangements, agreed to by the County, are made.

ENVIRONMENTAL REVIEW

Under California law, the subject project was subject to review under the California Environmental Quality Act (CEQA) and a CEQA determination was adopted at the time of project approval. The CEQA Guidelines provide that, 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. As the DA cancellation will remove authority for development from the parcel, no impacts are anticipated, thus the action of cancellation is not subject to CEQA.

RECOMMENDATION

Recommend the Board of Supervisors:

1. Find that Bynate is in material breach of the terms of the Development Agreement (DA) for Use Permit (UP) No. PLN2018 - 0149 – Bynate.
2. Find that the cancellation of the adopted DA for UP No. PLN2018-0149 – Bynate is in conformance with Government Code Section 65865.1 and Stanislaus County Code Section 22.08.020
3. Approve the cancellation of the DA for UP No. PLN2018-0149 – Bynate, ordering closure of all components of the operation within 30 days of the repeal of ordinance No. C.S. 1250, subject to inspection by the County.
4. Introduce, waive the reading, and adopt an ordinance to rescind ordinance No. C.S. 1250.

5. Order the filing of a notice of DA Cancellation for the adopted DA for UP No. PLN2018-0149 - Bynate with the Stanislaus County Clerk-Recorder's Office.

Contact Person: Jeremy Ballard, Senior Planner, (209) 525-6330

PROPERTY OWNER AND REPRESENTATIVE INFORMATION

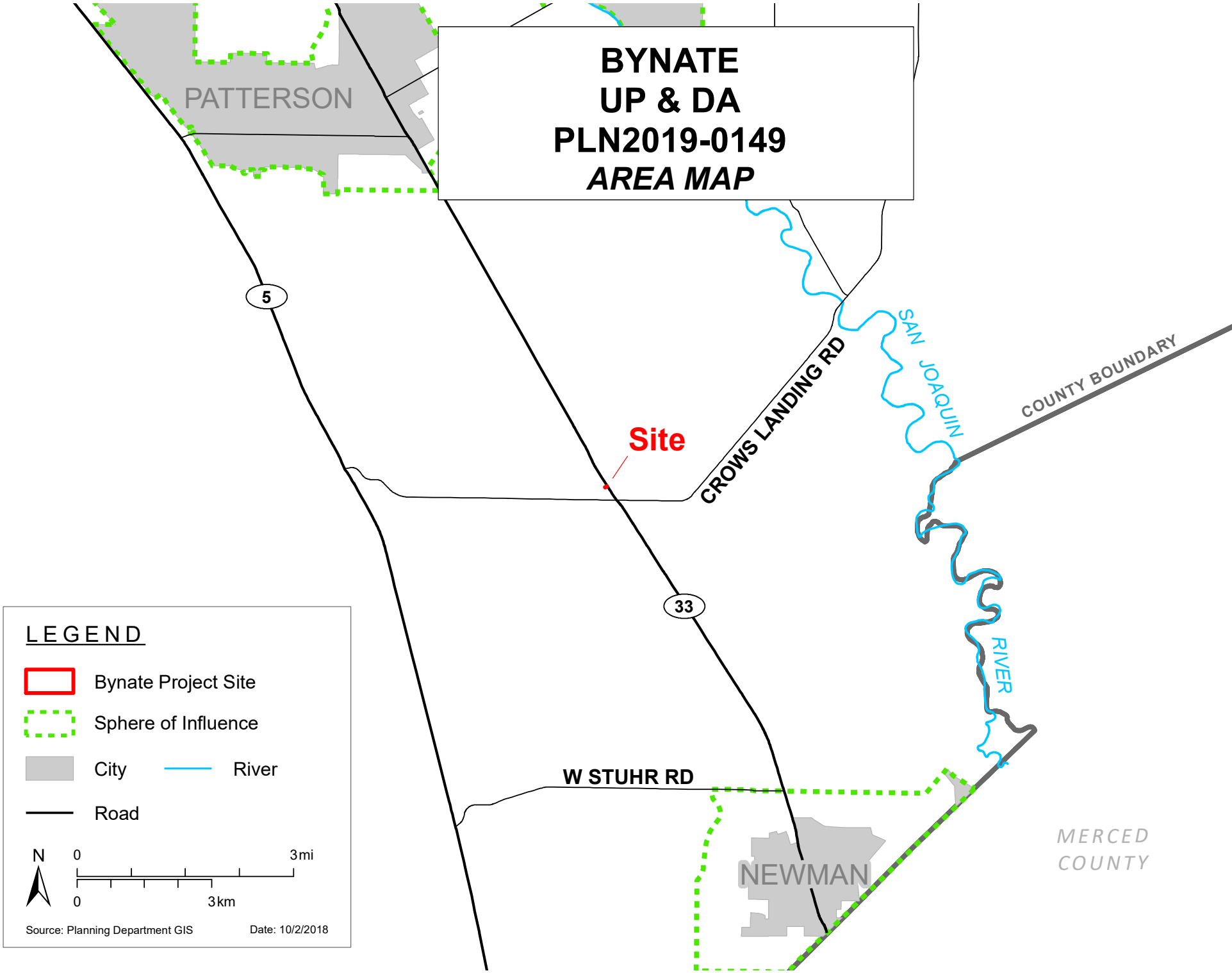
Applicant/Business Owner: Bynate (Byron Bogaard, Nate Trimble,
Jessica Trimble)
Property Owner: Lokgen Corporation (Byron Bogaard)

Attachments:

Attachment A – Project Area Map
Attachment B – Recorded Development Agreement*
Attachment C – Notices to the Operator
Attachment D – Recorded Notice of Administrative Conditions and Restrictions

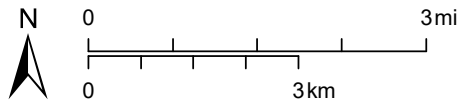
**Attachment C of Attachment B – Recorded Development Agreement is not included but can be reviewed upon request at the Stanislaus County Planning and Community Development Department or the Clerk of the Boards Office.*

BYNATE UP & DA PLN2019-0149 AREA MAP



LEGEND

-  Bynate Project Site
-  Sphere of Influence
-  City
-  River
-  Road



Source: Planning Department GIS Date: 10/2/2018



Stanislaus, County Recorder
Donna Linder Co Recorder Office
DOC- 2019-0063778-00

Thursday, SEP 19, 2019 08:19:10
Ttl Pd \$0.00 Rcpt # 0004325623
OJC/R2/1-44

RECORDING REQUESTED BY:

**COUNTY OF STANISLAUS
BOARD OF SUPERVISORS**

When Recorded Mail To:

County of Stanislaus
Department of Planning & Community Development
1010 10th Street, Suite 3400
Modesto, CA 95354

Fee Waived per GC 27383

Space above this line for Recorder's use

DEVELOPMENT AGREEMENT

BETWEEN THE

COUNTY OF STANISLAUS

AND

**BYNATE, INC.
21931 STATE HIGHWAY 33**

ATTACHMENT B

44 JC

THIS DEVELOPMENT AGREEMENT (this "Agreement" or this "Development Agreement") is made and entered in the County of Stanislaus on this 13th day of August, 2019, by and between Stanislaus County, a body corporate and a political subdivision of the State of California (hereafter "County") and Bynate, Inc., a California Corporation (hereafter "Permittee") pursuant to the authority of §§ 65864 *et seq.*, of the California Government Code and Stanislaus County Code, Title 22. County and Permittee are, from time-to-time, individually referred to in this Agreement as a "Party," and are collectively referred to as "Parties."

List of Attachments:

Attachment A "Project Description"

Attachment B "Legal Description/Property Description"

Attachment C "Floor Plan"

Attachment D "Operating Conditions"

Attachment E "Community Benefits"

Attachment F "Lease"

RECITALS

A. The Legislature of the State of California adopted the Development Agreement Act, Government Code §§65864 *et seq.*, which authorizes the County to enter into a property development agreement with any person having legal or equitable interest in real property for development of such property.

B. Pursuant to the Development Agreement Act, the County adopted the Development Agreement Ordinance, Title 22 of the Stanislaus County Code (hereafter "Title 22"), establishing procedures and requirements under which the County may enter into a Development Agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property.

C. Permittee retains a legal or equitable interest in certain real property located at 21931 State Highway 33, in the Crowslanding area, California, also known as Stanislaus County Assessor Parcel Number 027-012-055 and that is more particularly described in Attachment B attached hereto and is incorporated herein by reference. ("the Property") Permittee has leased the Property for the purpose of carrying out the Project from the owner Lokgen, Inc, ("Property Owner"). A copy of the lease is attached hereto as Attachment F.

D. Chapter 6.78 of the Stanislaus County Code (hereafter "Chapter 6.78") establishes a regulatory permit for Commercial Cannabis Activities ("Commercial

Cannabis Activities Permit”) and prohibits all Commercial Cannabis Activities in all zoning areas without first obtaining a permit.

E. Permittee proposes to develop the Property to be used for the commercial cannabis activity described in Attachment A (“the Project”).

F. To ensure that the County remains responsive and accountable to its residents while pursuing the benefits of this development agreement, the County accepts the restraints on its police powers contained in this Agreement only to the extent and for the duration required to achieve the County’s objectives and to offset such restraints, seeks public benefits from the Permittee that go beyond those obtained by traditional County controls and conditions imposed on development project applications.

G. The County Board of Supervisors has found that, among other things, this Development Agreement is consistent with its General Plan and has been reviewed and evaluated in accordance with the Development Agreement Statute and Title 22.

H. County and Permittee desire the timely, efficient, orderly and proper development of the Project.

I. County and Permittee have reached agreement and desire to express herein a Development Agreement that shall facilitate development of the Project in conformance with Title 22 and subject to conditions set forth herein.

J. In addition, the parties intend that this Agreement satisfy the requirements of Chapter 6.78, which requires those operating a commercial cannabis activity to enter into a “development agreement” setting forth “the terms and conditions under which the Commercial Cannabis Activity will operate that are in addition to the requirements of this chapter, including, but not limited to, public outreach and education, community service, payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety, and welfare.”

K. On June 20, 2019, the Stanislaus County Planning Commission, serving as the planning agency for purposes of Government Code section 65867, held a duly noticed public hearing on this Agreement and Related Project Approvals. Following the public hearing, the Planning Commission, determined that the Project, the Initial Project Approvals, and the Agreement are, as a whole and taken in their entirety, consistent with the County’s General Plan and the Zoning Code. The Planning Commission recommended approval of the Project, including this Agreement, to the Board of Supervisors.

L. On August 13, 2019, the County Board of Supervisors of the County of Stanislaus having receive the recommendations of the Planning commission, held a duly notice public hearing on this Agreement and the related initial Project Approvals. Following the public hearing, the board adopted Ordinance No. C.S.1250 (the “Enacting Ordinance”), approving this Agreement and authorizing the Chairman of the Board of Supervisors to execute this Agreement and found that the Agreement is consistent with the General Plan and Zoning Code in accordance with Government Code

section 65867.5 and determined that the Project as defined herein required no further analysis under CEQA, pursuant to CEQA Guidelines Section 15183 (Consistency with a General Plan or Zoning for which an EIR was prepared).

M. Permittee will implement public benefits, above and beyond the necessary mitigation for the Project, including the creation of new jobs, funding for various community improvements, and payment of the benefit fees as set forth in this Agreement and these public benefits serve as the consideration upon which the County bases its decision to enter into this Agreement.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, County and Permittee agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Recitals and all defined terms set forth above are hereby incorporated into this Agreement as if set forth herein in full.
2. Definitions.
 - 2.1. "Agreement" means this Development Agreement and all amendments and modifications thereto.
 - 2.2. "Enacting Ordinance" means Ordinance No.C.S.1250 adopted by the Board of Supervisors on August 13, 2019, approving this Agreement and authorizing the Chairman of the Board of Supervisors to execute this Agreement.
 - 2.3. "Initial Project Approvals" means those land use approvals and entitlements relating to the Project that were approved by the Board of Supervisors concurrently with this Agreement, which include the Use Permit, and CEQA determination.
 - 2.4. "Regulatory Permit" means the permit required by Stanislaus County Code Chapter 6.78 to conduct Commercial Cannabis Activities.
 - 2.5. "Development Agreement Act" means Article 2.5 of Chapter 4 of Division 1 of Title 7 (section 65864 through 65869.5) of the California government Code.
 - 2.6. "Development Agreement Ordinance" means Title 22 of the Stanislaus County Code.
 - 2.7. "Effective Date" is the date on which the Agreement shall be effective in accordance with section 7.1 hereof.
 - 2.8. "Rules, Regulations and Official Policies" means the County rules, regulations, ordinances, laws, and officially adopted policies governing development, including, without limitation, density and intensity of use, permitted

uses, the maximum height and size of proposed buildings, the provision for the reservation or dedication of land, if any, for public purposes, the construction, installation, and extension of public improvements, environmental review, and other criteria relating to development or use of real property and which are generally applicable to the Property.

2.9. "Uniform Codes" means those building, electrical, mechanical, plumbing, fire, and other similar regulations of a Countywide adopted scope that are based on recommendations of the California Building Standards Commission and that become applicable throughout the County, such as, but not limited to, the California Uniform Building Code, the California Uniform Electrical Code, the California Uniform Mechanical Code, California Uniform Plumbing Code, or the California Uniform Fire Code (including those amendments to the promulgated California Uniform codes that reflect local modification adopted pursuant to the applicable process provided in state law for a local jurisdiction to modify such uniform codes and that are applicable Countywide).

3. Description of the Project. The Project consist of the use of the Property for the Commercial Cannabis Activities set forth in Attachment A attached hereto and in the Initial Project Approvals.
4. Description of Property. The Property that is the subject of this Agreement is described in Attachments B and C attached hereto.
5. Interest of Permittee. The Permittee has a legal interest in the Property in that it is the Lessee of the property.
6. Relationship of County and Permittee. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the County and Permittee and that the Permittee is not an agent of the County. The County and Permittee hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the County and Permittee joint venture's or partners.
7. Effective Date and Term.

7.1. Effective Date. The Effective Date of this Agreement shall be the date on which the Enacting Ordinance becomes effective. The Enacting Ordinance is effective 30 days after the date of approval ("the Effective Date").

7.2. Term. The term of this Agreement shall commence on the Effective Date and extend five (5) years thereafter, unless said term is otherwise terminated or amended by circumstances set forth in this Agreement or Permittee no longer has a legal interest in the property or has ceased operations on the property for a period of 30 consecutive days.

8. Development of the Property.

8.1. Right to Develop. This Agreement is entered into by the Parties for the limited purpose of setting forth the terms concerning the development and use of the Property by Permittee for Commercial Cannabis Activities. Accordingly:

8.1.1. Vested Rights. Permittee waives any and all “vested rights” (as that term is used in California land use law) the Permittee may have or later acquire, in law or equity, concerning the Property or the Project except those specifically stated herein. Nothing contained in this Agreement, nor in any of the permits, approvals, plans, inspections, certificates, documents, licenses, or any other actions taken by the County regarding the Project shall be construed to grant Permittee any vesting of rights for future development or use of the Property or to conduct commercial cannabis activities except as specifically stated herein; and

8.1.2. Project Subject to Rules in Effect at Time of Development. Permittee agrees that any and all development and use of the Property shall be governed by the County’s fees, taxes, rules, regulations, ordinances, laws, and officially adopted policies governing the development and use of the Property, including, without limitation, impact fees, processing fees, regulatory fees and permits, density and intensity of use, permitted uses, the maximum height and size of proposed buildings, the provision for the reservation or dedication of land, if any, for public purposes, the construction, installation, and extension of public improvements, environmental review, and other criteria relating to development or use of real property and which are generally applicable to the Property in effect at the time of the development or use.

8.1.3. New Rules and Regulations. During the term of this Agreement, the County may apply new or modified ordinances, resolutions, rules, regulations and official policies of the County to the Property to ensure that the operation of the Commercial Cannabis Activity is consistent with the protection of the health, safety and welfare of the community and will not adversely affect the surrounding uses.

8.1.4. Future Approvals. Nothing in this Agreement shall prevent the County from denying or conditionally approving any subsequent land use permit or authorization for the Project on the basis of such new or modified ordinances, resolutions, rules, regulations and policies except that such subsequent actions shall be subject to any conditions, terms, restrictions, and requirements expressly set forth herein.

8.1.5. Application of State and Local Regulatory Laws Governing Commercial Cannabis Activities. The operation of Commercial Cannabis

Activities is a highly regulated business activity, and it is subject to various state and local laws and regulations. This Agreement does not, and the County cannot and does not intend to, give Permittee the right to continue its operations without complying with applicable state and local laws governing its operations. Permittee shall be responsible for obtaining all applicable state permits, approvals and consents, even if the applicable state laws and regulations are altered following the Effective Date.

8.1.6. Uniform Codes Applicable. The Project shall be constructed in accordance with the provisions of the California Building, Mechanical, Plumbing, Electrical and Fire Codes and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, or other construction permits for the Project.

8.1.7. Maintaining Regulatory Permit. Permittee shall continuously maintain its Regulatory Permit. Permittee agrees that it has an obligation to annually renew its Regulatory Permit pursuant to the terms of Stanislaus County Code Chapter 6.78. Nothing in this Agreement shall prevent the County from denying or conditionally approving the renewal of a Commercial Cannabis Business Regulatory Permit, revoking such permit, or amending Chapter 6.78 or its implementing regulations in a manner that would impose stricter requirements on existing or to-be-issued Regulatory Permits.

8.1.8. Timing of Development. Permittee shall complete Project improvements pursuant to the schedule set forth in Attachment G of this Agreement.

8.2. Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height, bulk and size of proposed buildings, provisions for reservation or dedication of land for public purposes and location and maintenance of on-site and off-site improvements, and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Initial Project Approvals, any amendments to this Agreement, and any subsequent land use entitlements.

8.2.1. Although Chapter 6.78 - Commercial Cannabis Activities, of the Stanislaus County Code does not specifically identify Commercial Cannabis Activities as allowed uses in any specific zoning district, Stanislaus County Code Title 21 identifies zoning districts where commercial cannabis activities are permitted, when a Use Permit is obtained.

9. Public Benefits

9.1. Community Benefits. Permittee shall perform the Community Benefits identified in Attachment E to the Agreement.

10. Fees & Subsequently Enacted or Revised Fees, Assessments and Taxes.

10.1. Fees. Permittee agrees to pay all permit fees and charges required by Stanislaus County, including but not limited to permit application and permit issuance fees, annual operating fees, amended registration fees, and regulatory renewal fees. Permittee shall pay such fees in an amount determined by the County Board of Supervisors.

10.2. Amended Application Fees. Any existing application, processing, renewal and registration fees that are amended during the term of this Agreement shall apply to the Project.

10.3. New Taxes. Any subsequently enacted County taxes shall apply to the Project.

10.4. Assessments. Nothing herein shall be construed to relieve the Property from assessments levied against it by the County pursuant to any statutory procedure for the assessment of property to pay for infrastructure and/or services which benefit the Property.

10.5. Vote on Future Assessments and Fees. In the event that any assessment, fee or charge which is applicable to the Property is subject to Article XIID of the Constitution and Permittee does not return its ballot, Permittee agrees, on behalf of itself and its successors that the County may count Permittee's ballot as affirmatively voting in favor of such assessment, fee or charge.

11. Compliance with Chapter 6.78 of the Stanislaus County Code.

11.1. The parties intend this Agreement as the instrument to satisfy the requirements of Stanislaus County Code section 6.78.060 (A)(2), which provides as follows:

"Development Agreement. Prior to operating in the county and as a condition of issuance of the CCA permit, the permittee of each commercial cannabis activity shall enter into a development agreement, as specified in Title 22 of the Stanislaus County Code, with the county setting forth the terms and conditions under which the commercial cannabis activity will operate that are in addition to the requirements of this chapter, and such other terms and conditions that will protect and promote the public health, safety and welfare."

12. Compliance with Conditions of Approval and Regulatory Permits.

12.1. Permittee agrees to operate the Commercial Cannabis Activity on the Property pursuant to the terms and conditions set forth in the Operating Conditions attached hereto as Attachment D and incorporated herein by reference. Failure to strictly comply with the terms and conditions of the Operating Conditions shall constitute a default under this Agreement, which shall be subject to termination pursuant to paragraph 15 below.

12.2. Permittee agrees that its failure to strictly comply with all the requirements set out in Attachment D shall be a material breach of this agreement and subject to default under paragraph 15 below.

12.3. The provisions of this Agreement require a close degree of cooperation between County and Permittee. It is anticipated during the term of this Agreement that refinements to the manner in which the Permittee operates may be appropriate with respect to the Project. To the extent allowable by law, the Parties shall retain a certain degree of flexibility as provided herein with respect to all matters, items and provisions covered in general under this Agreement. When and if the Parties find it necessary or appropriate to make changes, adjustments or clarifications, the Parties shall enter into memoranda ("Operating Memoranda") approved by the Parties in writing, which reference this Section of the Agreement. Operating Memoranda are not intended to constitute an amendment to this Agreement but mere ministerial clarifications; therefore, public notices and hearings shall not be required. The Stanislaus County Chief Executive Officer shall be authorized upon consultation with the County Counsel, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment to the Agreement which requires compliance with the provision of this Agreement pertaining to amendments. The authority to enter into such Operating Memoranda is hereby delegated to the Chief Executive Officer, who is hereby authorized to execute any Operating Memoranda hereunder without further Board of Supervisor action.

13. Amendment or Cancellation.

13.1. Amendment Because of Conflict with State or Federal Laws. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the County, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be subject to approval by the County Board of Supervisors in accordance with Stanislaus County Code, Title 22.

13.2. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of State law and permitted uses.

13.3. Insubstantial Amendments. Notwithstanding the provisions of the preceding Section 13.2, any amendments to this Agreement which do not relate to (a) the term of the Agreement; (b) the permitted uses of the Property; (c) provisions for "significant" reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Project; (f) the maximum height or size of proposed buildings; or (g) monetary contributions by Permittee as provided in this Agreement, shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the County Board of Supervisors before the parties may execute an amendment hereto. The County Chief Executive Officer, or his/her designee, shall determine whether a reservation or dedication is "significant".

13.4. Amendment of Project Approvals. Any amendment of Project Approvals relating to: (a) the permitted use of the Property; (b) provision for reservation or dedication of land; (c) conditions, terms, restrictions or requirements for subsequent discretionary actions; (d) the density or intensity of use of the Project; (e) the maximum height or size of proposed buildings; (f) monetary contributions by the Permittee; or (g) public improvements to be constructed by Permittee shall require an amendment of this Agreement. Such amendment shall be limited to those provisions of this Agreement which are implicated by the amendment of the Project Approval. Any other amendment of the Project Approvals, or any of them, shall not require amendment of this Agreement unless the amendment of the Project Approval(s) relates specifically to some provision of this Agreement.

14. Annual Review.

14.1. Review Date. Annual review of the Property Owner's good faith compliance with the terms of this Agreement shall take place on an annual basis beginning 12 months after the Effective Date of this Agreement and continuing to occur annually thereafter on the yearly anniversary of the Effective Date ("Annual Review") until termination of the Agreement.

14.2. Initiation of Review. The County Chief Executive Officer, or designee, shall initiate the annual review, as required under Chapter 22.07 of the Stanislaus County Code, by giving to Permittee thirty (30) days written notice that the County intends to undertake such review. Permittee shall provide evidence to the County Chief Executive Officer, or designee, prior to the hearing on the annual review, as and when reasonably determined necessary by the County Chief Executive Officer, or designee, to demonstrate good faith compliance with the provisions of the Agreement. The burden of proof by substantial evidence of compliance is upon the Permittee.

14.2.1. Appeal of the Chief Executive Officer's, or designee's, findings regarding compliance shall be made in accordance with Stanislaus County Chapter 22.07, except that the County Chief Executive Officer, or designee, shall replace all instances where the planning director is indicated.

14.3. Staff Reports. To the extent practical, the County shall deposit in the mail and fax to Permittee a copy of all staff reports, and related Attachments concerning contract performance at least ten (10) days prior to any annual review.

14.4. Costs. Costs reasonably incurred by the County in connection with the annual review shall be paid by Permittee in accordance with the County's schedule of fees in effect at the time of review.

15. Default.

15.1. Permittee's Default. The occurrence of any of the following shall constitute a default by Permittee under this Agreement.

15.1.1. Failure or unreasonable delay to perform any material provision of this Agreement.

15.1.2. Permittee's failure to pay when due any fee, tax, or payment required to be paid under this Agreement, County Ordinance or Resolution, or California State Law, if the failure to pay continues for three (3) days after written notice of the failure from County.

15.1.3. Permittee's abandonment of the Property, including Permittee's absence from the Property for thirty 30 consecutive days.

15.1.4. Permittee's failure to strictly comply with all the requirements set out in Attachment D.

15.1.5. Permittee's failure to make the contributions or community Benefit Rate Payments set out in Attachment E.

15.2. County's Default. Failure to perform any material provision of this agreement, or any intentional or unreasonable delay to perform or in performance of any material provision of this Agreement.

15.3. Other Remedies Available. Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity which are not otherwise provided for in this Agreement or in the County's regulations governing development agreements, expressly including the remedy of specific performance of this Agreement.

15.4. Notice and Cure. Upon the occurrence of an event of default by either party, the non-defaulting party shall serve written notice of such default upon the defaulting party ("Notice of Default"). Failure to give notice shall not constitute a waiver of any default. Upon delivery of notice, the parties shall meet and confer in good faith to address the alleged default and attempt to cure such default within a reasonable time or modify the Agreement to remedy such default.

15.5. Cure Period. The defaulting Party shall respond within 5 business days of the date of the Notice of Default, and shall provide reasonable evidence that it was never, in fact, in default or shall state that it will immediately commence to cure the identified default and shall cure the identified default within 30 days of the Notice of Default, unless the Parties extend such time by mutual written consent. In the case of a dispute as to whether a default exist or whether the defaulting Party has cured the default, the Parties may submit the matter to dispute resolution pursuant to section 16 of this Agreement.

15.6. Remedies for Default.

15.6.1. Permittee Default; If the Permittee remains in default after the cure period, and the alleged default is not the subject of a dispute resolution pursuant to Section 16 of this Agreement, the County shall have all rights and remedies provided by this Agreement, including, without limitation, the right to terminate or modify this Agreement subject to the provisions set forth below. The County shall, in addition to any other remedy available at law or in equity, also have the right to compel specific performance of the obligations of Property Owner under this Agreement, including, without limitation, the right to compel specific performance of the Community Benefits set forth in Attachment E to this Agreement.

15.6.2. Termination or Modification. If the Director of Planning finds and determines that Permittee remains in default after the cure period, if the alleged default is not the subject of dispute resolution pursuant to Section 16 of this Agreement, and if the County intends to terminate or modify this Agreement, the Director of Planning shall set the matter for a hearing by the Planning Commission in accordance with the provisions of the Development Agreement Ordinance (County Code Chapter 22.08). If after such public hearing, the Planning Commission finds that Property Owner is in violation of this Agreement, the Planning Commission shall notify the Board of Supervisors of its findings and recommend such action as it deems appropriate. If the Planning Commission reports a violation of the Development Agreement to the Board of Supervisors pursuant to this Section, the Board of Supervisors may take one of the following actions: (a) approve the recommendation of the Planning Commission instructing that action be taken as indicated therein in cases other than a recommendation to terminate or modify the Agreement; (b) refer the matter back to the Planning Commission for further proceedings with or without instructions;

or (c) schedule the matter for hearing before the Board of Supervisors if termination or modification of the Agreement is recommended. There shall be no termination or modifications of this Agreement unless the Board of Supervisors acts pursuant to the provisions set forth in Government Code Sections 65865.1, et seq., and Stanislaus County Code chapter 22.08. Pursuant to Government Code §65865., if as a result of the Annual Review, the County determines, on the basis of substantial evidence, that Permittee has not complied in good faith with terms or conditions of this Agreement, the County may terminate or modify the Agreement; provided, however, that if Permittee does not agree to the modification the County's only remedy shall be to terminate the Agreement. Further, if the County seeks to terminate or modify the Agreement for any other reason, such action shall be subject to the requirements of Government Code § 65868, including the requirement for the mutual consent of the Parties.

15.6.3. County Default. If the County remains in default after the cure period and the alleged default is not the subject of dispute resolution pursuant to Section 16 of this Agreement, Permittee shall have all rights and remedies provided by this Agreement, including, without limitation, the right to compel specific performance of the County's obligations under this Agreement. Permittee also has the right to initiate amendment or cancellation of this Agreement subject to the provisions set forth in the Development Agreement Act and Development Agreement Ordinance, which include, but are not limited to, the requirement for mutual consent of the Parties to the amendment or cancellation.

15.6.4. No Monetary Damages Against County. Notwithstanding anything to the contrary contained herein, in no event shall monetary damages be awarded against the County upon an event of default or upon termination of this Agreement.

16. Dispute Resolution. In addition to, and not by way of limitation of, all other remedies available to the Parties under the terms of this Agreement, the Parties may choose to use the informal dispute resolution and/or arbitration processes in this Section.

16.1. Informal Dispute Resolution Process. The Parties may agree to informal dispute resolution proceedings to fairly and expeditiously resolve disputes related to the interpretation or enforcement of, or compliance with, the provision of this Agreement ("Disputes"). These dispute resolution proceedings may include: (a) procedures developed by the County for expeditious interpretation of questions arising under development agreements; or (b) any other manner of dispute resolution that is mutually agreed upon by the Parties.

16.2. Non-Binding Arbitration. The Parties may agree to use nonbinding arbitration to resolve any Dispute arising under this Agreement. The arbitration shall be conducted by an arbitrator who must be a former judge of the Stanislaus

County Superior Court, Appellate Justice of the Fifth District Court of Appeals, or Justice of the California Supreme Court. This arbitrator shall be selected by mutual agreement of the Parties.

16.3. Non-Binding Arbitration Procedures. Upon appointment of the arbitrator, the Dispute shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under procedures that are mutually agreed upon by the Parties in writing prior to the commencement of arbitration.

17. Termination or cancellation. In addition to the procedures set forth in Section 15.6, above, this Agreement is also subject to the following termination provisions:

17.1. Termination Upon Expiration of Term. This Agreement shall terminate upon expiration of the Term set forth in Section 7.2 unless otherwise extended or modified by mutual consent of the Parties. Upon termination of this Agreement, the County Registrar-Recorder/County Clerk may cause a notice of such termination in a form satisfactory to the County to be duly recorded in the official records of the County.

17.2. Cancellation by Mutual Consent. This Agreement may be cancelled by mutual consent of the Parties, subject to the procedures set forth in the Development Agreement Act and the Development Agreement Ordinance.

17.3. Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where a delay is enforced due to: war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, third-party litigation, restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, judicial decisions, or similar basis for excused performance that is not within the reasonable control of the Party to be excused, and the cause of the enforced delay actually prevents or unreasonably interferes with such Party's ability to comply with this Agreement; provided, however, that the Parties agree that a delay that results solely from unforeseen economic circumstances shall not constitute an enforced delay for purposes of this Section. This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Permittee, or by any third parties against Permittee if such third-party proceedings are not dismissed within ninety (90) days. If written notice of an enforced delay is given to either Party within forty-five (45) days of the commencement of such enforced delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

18. Estoppel Certificate.

18.1. Either party may, at any time, and from time to time, request written notice from the other party requesting such party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying party the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. Chief Executive Officer of the County shall be authorized to execute any certificate requested by Permittee. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default, provided that such party shall be deemed to have certified that the statements in clauses (a) through (c) of this section are true, and any party may rely on such deemed certification.

19. Severability.

19.1. The unenforceability, invalidity or illegality of any provisions, covenant, condition or term of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

20. Attorneys' Fees and Costs.

20.1. If the County or Permittee initiates any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Permittee shall bear its own costs of defense as a real party in interest in any such action and shall reimburse the County for all reasonable court costs and attorneys' fees expended by the County in defense of any such action or other proceeding.

21. Transfers and Assignments.

21.1. The Permittee shall not transfer, delegate, or assign its interest, rights, duties, and obligations under this Agreement without the prior written consent of the County. Any assignment, delegation, or assignment without the prior written County consent of the other parties to this Agreement shall be null and void. Any transfer, delegation, or assignment by the Permittee as authorized herein shall be effective only if and upon the party to whom such transfer, delegation, or

assignment is made is issued a Regulatory Permit as required under chapter 6.78 of the Stanislaus County Code.

21.2. No change in Permittee's ownership or in the composition of the Permittee's ownership shall be made, and no transfer or sub-lease of the lease Agreement shall be made, without providing the County with 30 days prior written notice. If the change, transfer or sub-lease changes Control over the use of the Property, the operations of Permittee, or the actions or activities of Permittee, then the prior written consent of the County must be obtained 30 days before the change, transfer or sub-lease.

21.3. Notwithstanding the above, the County Chief Executive Officer (CEO) shall evaluate in good faith any request for a transfer of rights to a third party under this Agreement, and shall not unreasonably withhold approval of such request. The CEO's evaluation may take into consideration the experience of and resources available to the prospective transferee relative to their ability to competently assume the commercial cannabis business operation, and applicable background information of the third party, including but not limited to a background check for criminal activity, a history of legal actions such as filing for bankruptcy, civil lawsuits involving claims of fraud or related actions. Additionally, the CEO may, at his or her discretion, deny a transfer request for any of the reasons contemplated in California Code of Regulations, tit. 16, sections 5017-5018.

21.3.1. Successor in Interest. Permittee shall have the right to name a successor in interest who may assume ownership of the Cannabis Business Project and permits thereunder in the event of the permittee or it's principal's death or incapacity, provided the CEO has conducted a background check of the named successor in interest, subject to the provisions for assignments to third parties set forth above, and there are no issues related to his or her background that would preclude eligibility to operate the Cannabis Business Project. Permittee shall designate its successor in interest in writing and provide notice to the County as set forth below.

22. Bankruptcy.

The obligations of this Agreement shall not be dischargeable in bankruptcy.

23. Indemnification.

23.1. Permittee hereby agrees to and shall indemnify, save, hold harmless, and, if requested by the County, defend the County from any claim, action, or proceeding brought by a third party (i) to challenge, attack, set aside, void, or annul this Agreement or the Initial Project Approvals, or (ii) for claims, costs, and liability for any damages, personal injury, or death, which may arise in connection with The Project or this Agreement. Directly or indirectly from the negotiation, formation, execution, enforcement, or termination of this Agreement. Nothing in this Section

shall be construed to mean that Permittee shall hold the County harmless and/or defend it from any claims arising from, or alleged to arise from, the negligent acts, negligent failure to act, or intentional acts on the part of the County. The County agrees that it shall reasonably cooperate with Permittee in the defense of any matter in which Permittee is defending, indemnifying, and/or holding the County harmless. The County may make all reasonable decisions with respect to its representation in any legal proceeding. In the event any claim, action, or proceeding as described above is filed by a third party against the County, Permittee shall, within 10 days of being notified of the filing, make an initial deposit with the County in the amount of \$5,000, from which actual costs and expenses shall be billed and deducted for purposes of defraying the costs and/or expenses involved in the County's cooperation in the defense, including, but not limited to, depositions, testimony, and other assistance provided to Permittee or Permittee's counsel. If during the litigation process actual costs or expenses incurred reach 80 percent of the amount on deposit, Permittee shall deposit additional funds to bring the balance up to the amount of \$5,000. There is no limit to the number of supplemental deposits that may be required during the course of litigation. At the sole discretion of Permittee, the amount of the initial or any supplemental deposit may exceed the minimum amounts specified herein. Additionally, the cost for collection and duplication of records, including the reasonable costs of staff time necessary to collect, review, and/or duplicate such records in connection with the preparation of any administrative record or otherwise in relation to litigation, shall be paid by Permittee. Upon Permittee's initial \$5,000.00 deposit to cover the County's costs and expenses pursuant to this section, Permittee shall have the right to a monthly, itemized accounting of such expenses, which County shall provide upon Permittee's request within 5 days of such request, but no sooner than 30 days after Permittee's initial deposit.

24. Insurance.

24.1. Public Liability and Property Damage Insurance. During the term of this Agreement, Permittee shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than two million dollars (\$2,000,000.00) with a one hundred thousand dollar (\$100,000) self-insurance retention per claim. The policy so maintained by Permittee shall name the County as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

24.2. Workers Compensation Insurance. During the term of this Agreement Permittee shall maintain Worker's Compensation insurance for all persons employed by Permittee for work at the Project site. Permittee shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Permittee agrees to indemnify the County for any damage resulting from Permittee's failure to maintain any such insurance.

24.3. Evidence of Insurance. Prior to the County Board of Supervisors approval of this Agreement, Permittee shall furnish the County satisfactory evidence of the insurance required in Sections 24.1 and 24.2 and evidence that the carrier is required to give the County at least fifteen days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the County, its elective and appointive boards, commissions, officers, agents, employees and representatives and to Permittee performing work on the Project.

25. Notices.

25.1. All notices required or provided for under this Agreement shall be in writing. Notices required to be given to the County shall be addressed as follows:

County Chief Executive Officer
County of Stanislaus
1010 10th Street, Suite 6800
Modesto, CA 95354

Notices required to be given to Permittee shall be addressed as follows:

Bynate, Inc.
5278 Poppy Hills Circle
Stockton, CA 95219
ATTN: Byron Bogaard

A party may change address by giving notice in writing to the other party and thereafter all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following day or by facsimile transmission which shall be deemed given upon verification of receipt.

26. Agreement is Entire Understanding.

This Agreement constitutes the entire understanding and agreement of the parties.

27. Attachments.

The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Attachment A "Project Description"
Attachment B "Legal Description/Property Description"
Attachment C "Site/Floor Plan"
Attachment D "Operating Conditions"
Attachment E "Community Benefits"
Attachment F "Lease"

28. Counterparts.

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

29. Recordation.

The County shall record a copy of this Agreement within ten (10) days following execution by all parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

COUNTY

PERMITTEE

County of Stanislaus

Bynate, Inc.

By: 

By: 

Terrance Withrow
Chairman of the Board of Supervisors

Byron Bogaard, CEO

Dated: 8/11/19

Attest:
Clerk of the Board of Supervisors

By: 

Jessica Tremble, Secretary

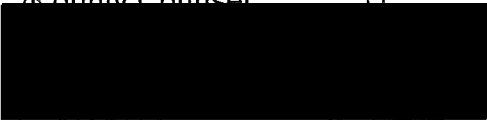

Deputy Clerk

Dated: 8/11/19

Approved as to form:
Thomas E. Boze
County Counsel

By: 

Nathan Tremblé, CFO


Thomas E. Boze

Dated: AUG - 1 - 2019

(NOTARIZATION ATTACHED)

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

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

State of California }

County of Stanislaus }

On September 18, 2019 before me, Karyn A. Watson, Notary Public,
(Here insert name and title of the officer)

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

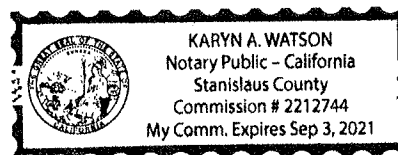
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT
Development Agreement
(Title or description of attached document)

Byrate Inc.
(Title or description of attached document continued)

Number of Pages — Document Date 8-1-19

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other Chairman of BOB

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/~~they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

ATTACHMENT A

PROJECT DESCRIPTION

Project Description: To establish a commercial cannabis retail operation within a 625 square foot building located in the C-2 (General Commercial) zoning district.

ATTACHMENT B

LEGAL DESCRIPTION

Real property in the County of Stanislaus, State of California, described as follows:

Lot 11 in Block 38, as shown upon that certain map entitled "Map of the Town of Crows Landing", filed for record June 8, 1901 in Volume 1 of Maps, Page 60, Stanislaus County Records.

ATTACHMENT D

OPERATING CONDITIONS

1. Compliance with Laws. Permittee shall operate in accordance with all applicable State and local laws, and any regulations promulgated thereunder.
2. Compliance with Conditions of Approval/Development Standards/Mitigation Measures. Permittee shall operate in compliance with all conditions of approval/development standards/mitigation measures associated with the Initial Project Approvals and any subsequent approvals issued by the County or any other regulatory agency.
3. Compliance with License Regulations. Permittee shall operate in strict compliance with the regulations contained in Chapter 6.78 of the Stanislaus County Code.
4. Hours of operation. A licensed Retailer shall only sell cannabis goods during the hours of 8:00 a.m. Pacific Time to 8:00 p.m. Pacific Time, and shall not otherwise be open to the public outside of those hours.

ATTACHMENT E

COMMUNITY BENEFITS

Permittee agrees that its participation in commercial cannabis activities negatively impacts the residents of Stanislaus County and that by entering into this Development Agreement Permittee is agreeing to contribute greater public benefits than could otherwise be required and that Permittee does so freely and with full knowledge and consent.

Permittee agrees to provide the following public benefits and specifically consents to the payment or provision of these public benefits. Permittee agrees that these public benefits are not a tax and do not constitute a taking of Permittee's property for the public's benefit and Permittee waives any and all claims, actions, causes of action, liabilities, damages, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which may arise by reason of payment or provision of the community benefits stated herein.

A. Community Benefit Contribution.

Permittee shall pay to the County a Community Benefit Contribution in the amount of \$5,000 in year 1 (first payment due July 1, 2019); \$10,500 in 2020, \$11,000 in 2021, \$11,500 in 2022, and \$12,000 in 2023. Permittee shall deliver the Community Benefit Contribution in quarterly installments in the same manner as Benefit Rate Payments described in section B.

The Community Benefit Contribution may be used for the general governmental purposes of the County and not for the purposes of regulation or of raising revenues for regulatory purposes. All of the Community Benefit Contribution proceeds received from Permittee shall be placed in the County's general fund and used for the usual current expenses of the County and is a separate and distinct payment from the Community Benefit Rate Payment below. The County intends, but is not obligated, to distribute these funds to local community charities for their use and for public improvement projects.

B. Community Benefit Rate Payments:

1. Permittee shall provide funding as described below for the general governmental purposes of the County, including the enforcement of illegal commercial cannabis activities, and not for the purposes of regulation or of raising revenues for regulatory purposes. All of the proceeds received from Permittee shall be placed in the County's general fund and used for the usual current expenses of the County.

2. Definitions.

2.1. "Canopy" means all of the following:

2.1.1. The designated area(s) at a licensed premises that will contain cannabis plants at any point in time;

2.1.2. Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain cannabis plants at any point in time, including all of the space(s) within the boundaries;

2.1.3. Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary such as an interior wall or by at least ten feet of open space; and

2.1.4. If cannabis plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.

2.2. "Designated area(s)" means the entirety of the enclosed area measured in square feet without regard to any portion of the enclosed area that does not or will not contain cannabis plants.

2.3. "Gross Receipts," except as otherwise specifically provided, means the total amount actually received or receivable from all sales or transfers; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

2.3.1. Cash discounts allowed and taken on sales;

2.3.2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;

2.3.3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

2.3.4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

2.3.5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;

2.3.6. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the Permittee in the regular course of the Permittee's business;

2.3.7. Cash value of sales, trades or transactions between departments or units of the same business;

2.3.8. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of gross receipts for the period when they are recovered;

2.3.9. Transactions between a partnership and its partners;

2.3.10. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:

A. The voting and nonvoting stock of which is owned at least 80 percent by such other corporation with which such transaction is had; or

B. Which owns at least 80 percent of the voting and nonvoting stock of such other corporation; or

C. At least 80 percent of the voting and nonvoting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

2.3.11. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in subsection (E)(9) of this section;

2.3.12. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of \$1.00;

2.3.13. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

2.4. "Sell," "sale," and "to sell" include any transaction whereby, for any consideration, title to cannabis is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom such cannabis or cannabis product was purchased.

3. Amount of Community Benefit Rate Payment.

3.1. Retail. Permittee shall pay the County:

3.1.1. In Year 2019, the greater of \$100,000 or 8% of Gross Receipts, to be paid in quarterly installments within 30 days of adoption, and on July 30, October 30, and January 30.

3.1.2. Subsequent years to be paid in quarterly installments on April 30, July 30, October 30, and January 30, as follows:

- A. In Year 2020, the greater of \$105,000 or 8% of Gross Receipts;
- B. In Year 2021 the greater of \$110,000 or 8% of Gross Receipts;
- C. In Year 2022, the greater of \$115,000 or 8% of Gross Receipts;
- D. In Year 2023, the greater of \$120,000 or 8% of Gross Receipts.

4. Payment Location. Permittee shall make the Community Benefit Rate Payment at the Offices of the County Treasurer-Tax Collector. The Community Benefit Rate Payment may be paid in legal tender or in money receivable in payment of taxes by the United States. The County Treasurer-Tax Collector shall have the right to refuse the payment in coins. The County Treasurer-Tax Collector may, in his or her discretion, accept electronic funds transfers in payment of the Community Benefit Rate Payment in the same way it would accept the payment of taxes in accordance with section 2503.2 of the Revenue and Taxation Code.

5. Payment Due.

5.1. The Community Benefit Rate Payment shall be due and payable as follows:

5.1.1. Permittee shall on or before the last day of the period designated by and at the discretion of the County Treasurer-Tax Collector, prepare and deliver a Community Benefit Rate Payment statement to the County

Treasurer-Tax Collector of the total gross receipts and the amount of Community Benefit Rate Payment owed for the preceding designated period. At the time the Community Benefit Rate Payment statement is filed, the full amount of the Community Benefit Rate Payment owed for the preceding designated period shall be remitted to the County Treasurer-Tax Collector.

5.1.2. All Community Benefit Rate Payment statements shall be completed on forms provided by the County Treasurer-Tax Collector.

5.1.3. Community Benefit Rate Payment statements and payments for all outstanding Community Benefit Rate Payment owed the County are immediately due to the County Treasurer-Tax Collector upon cessation of business for any reason.

6. Payments and Communications Made by Mail—Proof of Timely Submittal. Community Benefit Rate Payments made shall be deemed timely if submitted in accordance with Revenue and Taxation Code sections 2512 and 2513.

7. Payment—When Deemed Late.

7.1. The Community Benefit Rate Payments required to be paid pursuant to this Agreement shall be deemed late if not paid on or before the due date specified in this Attachment E.

7.2. The County is not required to send a late or other notice or bill to the Permittee.

8. Payment—Returned Checks. Whenever a check is submitted in payment of and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the Permittee, in addition to the amount due, pay a return check fee as established by the Board of Supervisors.

9. Payment —Interest on Late Payments. If Permittee fails to remit the Community Benefit Rate Payment at the time due shall pay interest at the rate of one-half of one percent per month or fraction thereof on the amount of the Community Benefit Rate Payment, from the date on which the remittance first became delinquent until paid. All such interest as accrues shall become a part of the Community Benefit Rate Payment required to be paid. Only payments for the full amount due shall be accepted. Partial payments shall not be accepted.

10. Refunds.

10.1. Whenever the amount of Community Benefit Rate Payment or interest has been overpaid, paid more than once, or has been erroneously collected or received

by the County under this Agreement, it may be refunded to the Permittee; provided, that a written claim for refund is filed with the County Treasurer-Tax Collector within three years of the date the Community Benefit Rate Payment was originally due and payable.

10.2. The County Treasurer-Tax Collector or the County Treasurer-Tax Collector's authorized agent shall have the right to examine and audit all the books and business records of the Permittee in order to determine the eligibility of the Permittee to the claimed refund. No claim for refund shall be allowed if the Permittee refuses to allow such examination of Permittee's books and business records after request by the County Treasurer-Tax Collector to do so.

10.3. In the event that the Community Benefit Rate Payment was erroneously paid and the error is attributable to the County, the entire amount of the Community Benefit Rate Payment erroneously paid shall be refunded to the claimant. If the error is attributable to the Permittee, the County shall retain the amount set forth in the schedule of fees and charges established by resolution of the Board of Supervisors from the amount to be refunded to cover expenses.

11. Audit and Examination of Records and Equipment.

11.1. The County Treasurer-Tax Collector shall have the power to audit and examine all books and records of the Permittee, including both State and Federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of the Permittee, and, where necessary, all equipment of Permittee, for the purpose of ascertaining the gross receipts to determine the amount of Community Benefit Rate Payment, if any, required to be paid by this Agreement, and for the purpose of verifying any statements or any item thereof when filed by the Permittee. If such person, after written demand by the County Treasurer-Tax Collector, refuses to make available for audit, examination or verification such books, records or equipment as the County Treasurer-Tax Collector requests, the County Treasurer-Tax Collector may, after full consideration of all information within his or her knowledge concerning the cannabis business and activities of the person so refusing, make an assessment in the manner provided in this Chapter of any Benefit Rate Payment estimated to be due.

11.2. Permittee shall keep and preserve, for a period of at least three years, all records as may be necessary to determine the amount of the Community Benefit Rate Payment, which records the County Treasurer-Tax Collector shall have the right to inspect at all reasonable times.

12. Deficiency Determination. If the County Treasurer-Tax Collector is not satisfied that any statement filed as required under the provisions of this Agreement is correct, or that the amount of Community Benefit Rate Payment is correctly computed, the Treasurer-Tax Collector may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts

contained in the statement or upon the basis of any information in their possession or that may come into their possession within three years of the date the Community Benefit Rate Payment was originally due and payable. One or more deficiency determinations of the amount of Community Benefit Rate Payment due for a period or periods may be made. If Permittee discontinues the permitted commercial cannabis activity, a deficiency determination may be made at any time within three years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the Community Benefit Rate Payment would otherwise be due. Whenever a deficiency determination is made, a notice shall be given to the Permittee concerned in the same manner as notices under this Agreement.

13. Subsequently Enacted Tax. In the event Stanislaus County enacts a tax applicable to the Project following the execution of this agreement, Permittee's obligation to pay Community Benefit Rates under this Section shall be reduced by the amount to which Permittee would be obligated to pay under the subsequently enacted tax.

[End of Attachment E.]

ATTACHMENT F

COMMERCIAL LEASE AGREEMENT

THIS LEASE (this "Lease") dated this _____ day of Oct 06, 2017

BETWEEN:

Lokgen Corporation of 20195 Arion St

Telephone: (209) 479-1854 Fax: _____

(the "Landlord")

OF THE FIRST PART

- AND -

33

Bynate of _____

(the "Tenant")

OF THE SECOND PART

IN CONSIDERATION OF the Landlord leasing certain premises to the Tenant, the Tenant leasing those premises from the Landlord and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Lease (the "Parties") agree as follows:

Definitions

1. When used in this Lease, the following expressions will have the meanings indicated:
 - a. "Additional Rent" means all amounts payable by the Tenant under this Lease except Base Rent, whether or not specifically designated as Additional Rent elsewhere in this Lease;
 - b. "Building" means all buildings, improvements, equipment, fixtures, property and facilities from time to time located at 21931 state highway 33, Crows Landing, 95313, as from time to time altered, expanded or reduced by the Landlord in its sole discretion;
 - c. "Common Areas and Facilities" mean:
 - i. those portions of the Building areas, buildings, improvements, facilities, utilities, equipment and installations in or forming part of the Building which from time to time are not designated or intended by the Landlord to be leased to tenants of the Building

including, without limitation, exterior weather walls, roofs, entrances and exits, parking areas, driveways, loading docks and area, storage, mechanical and electrical rooms, areas above and below leasable premises and not included within leasable premises, security and alarm equipment, grassed and landscaped areas, retaining walls and maintenance, cleaning and operating equipment serving the Building; and

- ii. those lands, areas, buildings, improvements, facilities, utilities, equipment and installations which serve or are for the useful benefit of the Building, the tenants of the Building or the Landlord and those having business with them, whether or not located within, adjacent to or near the Building and which are designated from time to time by the Landlord as part of the Common Areas and Facilities;
- d. "Leasable Area" means with respect to any rentable premises, the area expressed in square feet of all floor space including floor space of mezzanines, if any, determined, calculated and certified by the Landlord and measured from the exterior face of all exterior walls, doors and windows, including walls, doors and windows separating the rentable premises from enclosed Common Areas and Facilities, if any, and from the center line of all interior walls separating the rentable premises from adjoining rentable premises. There will be no deduction or exclusion for any space occupied by or used for columns, ducts or other structural elements;
- e. "Premises" means the building at 21931 state highway 33, Crows Landing, 95313.
- f. "Rent" means the total of Base Rent and Additional Rent.

Intent of Lease

- 2. It is the intent of this Lease and agreed to by the Parties to this Lease that rent for this Lease will be on a gross rent basis meaning the Tenant will pay the Base Rent and any Additional Rent and the Landlord will be responsible for all other service charges related to the Premises and the operation of the Building save as specifically provided in this Lease to the contrary.

Leased Premises

- 3. The Landlord agrees to rent to the Tenant the building municipally described as 21931 state highway 33, Crows Landing, 95313, (the "Premises"). The Premises will be used for only the following permitted use (the "Permitted Use"):
They can use the business for anything it is permitted for. If they are going to make tenant improvements, they must first consult with the owner.

Term

4. The term of the Lease is a periodic tenancy commencing at 12:00 noon on December 31, 2017 and continuing on a month-to-month basis until the Landlord or the Tenant terminates the tenancy (the "Term").

Rent

5. Subject to the provisions of this Lease, the Tenant will pay a base rent of \$1,200.00, payable per month, for the Premises (the "Base Rent"), without setoff, abatement or deduction. In addition to the Base Rent, the Tenant will pay for any fees or taxes arising from the Tenant's business.
6. For the first 4 months of the term (the "Abatement Period"), the Tenant will not be obligated to pay the monthly installment of Base Rent due but will be liable to pay all other amounts payable under this Lease. The entire Base Rent otherwise due and payable for the Abatement Period will become immediately due and payable upon the occurrence of an event of default under this Lease.
7. The Tenant will pay the Base Rent on or before the 15th of each and every month of the Term to the Landlord.
8. No acceptance by the Landlord of any amount less than the full amount owed will be taken to operate as a waiver by the Landlord for the full amount or in any way to defeat or affect the rights and remedies of the Landlord to pursue the full amount.
9. For any rent review negotiation, the Base Rent will be calculated as being the higher of the Base Rent payable immediately before the date of review and the Open Market Rent on the date of review.

Use and Occupation

10. The Tenant will carry on business under the name of Bynate or 33 and will not change such name without the prior written consent of the Landlord, such consent not to be unreasonably withheld. The Tenant will open the whole of the Premises for business to the public fully fixtured, stocked and staffed on the date of commencement of the term and throughout the term, and will continuously occupy and utilize the entire Premises in the active conduct of its business in a reputable manner on such days and during such hours of business as may be determined from time to time by the Landlord.
11. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, provincial, municipal or other competent authority and will not do anything on or in the Premises in contravention of any of them.

Quiet Enjoyment

12. The Landlord covenants that on paying the Rent and performing the covenants contained in this Lease, the Tenant will peacefully and quietly have, hold, and enjoy the Premises for the agreed term.

Distress

13. If and whenever the Tenant is in default in payment of any money, whether hereby expressly reserved or deemed as rent, or any part of the rent, the Landlord may, without notice or any form of legal process, enter upon the Premises and seize, remove and sell the Tenant's goods, chattels and equipment from the Premises or seize, remove and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them, in the same manner as if they had remained and been distrained upon the Premises, all notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the Landlord's right of distress.
14. If the Tenant continues to occupy the Premises without the written consent of the Landlord at the expiration or other termination of the term, then the Tenant will be a tenant at will and will pay to the Landlord, as liquidated damages and not as rent, an amount equal to twice the Base Rent plus any Additional Rent during the period of such occupancy, accruing from day to day and adjusted pro rata accordingly, and subject always to all the other provisions of this Lease insofar as they are applicable to a tenancy at will and a tenancy from month to month or from year to year will not be created by implication of law; provided that nothing in this clause contained will preclude the Landlord from taking action for recovery of possession of the Premises.

Inspections and Landlord's Right to Enter

15. Tenant acknowledges that it inspected the Premises, including the grounds and all buildings and improvements, and that they are, at the time of the execution of this Lease, in good order, good repair, safe, clean, and tenantable condition.

Tenant Improvements

16. The Tenant will obtain written permission from the Landlord before doing any of the following:
 - a. painting, wallpapering, redecorating or in any way significantly altering the appearance of the Premises;
 - b. removing or adding walls, or performing any structural alterations;

- c. changing the amount of heat or power normally used on the Premises as well as installing additional electrical wiring or heating units;
- d. subject to this Lease, placing or exposing or allowing to be placed or exposed anywhere inside or outside the Premises any placard, notice or sign for advertising or any other purpose;
- e. affixing to or erecting upon or near the Premises any radio or TV antenna or tower, or satellite dish; or
- f. installing or affixing upon or near the Premises any plant, equipment, machinery or apparatus without the Landlord's prior consent.

Utilities and Other Costs

- 17. The Tenant is responsible for the direct payment of the following utilities and other charges in relation to the Premises: electricity, natural gas, water, sewer, telephone, Internet and cable.
- 18. The Tenant will also directly pay for the following utilities and other charges in relation to the Premises: painting and any upgrades including the AC/Heat unit.

Insurance

- 19. The Tenant is hereby advised and understands that the personal property of the Tenant is not insured by the Landlord for either damage or loss, and the Landlord assumes no liability for any such loss. The Tenant is advised that, if insurance coverage is desired by the Tenant, the Tenant should inquire of Tenant's insurance agent regarding a Tenant's Policy of Insurance.
- 20. The Tenant is responsible for insuring the Landlord's contents and furnishings in or about the Premises for either damage and loss for the benefit of the Landlord.
- 21. The Tenant is responsible for insuring the Premises for damage or loss to the structure, mechanical or improvements to the Building on the Premises for the benefit of the Tenant and the Landlord. Such insurance should include such risks as fire, theft, vandalism, flood and disaster.
- 22. The Tenant is responsible for insuring the Premises for liability insurance for the benefit of the Tenant and the Landlord.
- 23. The Tenant will provide proof of such insurance to the Landlord upon request.

Abandonment

- 24. If at any time during the Term, the Tenant abandons the Premises or any part of the Premises, the

Landlord may, at its option, enter the Premises by any means without being liable for any prosecution for such entering, and without becoming liable to the Tenant for damages or for any payment of any kind whatever, and may, at the Landlord's discretion, as agent for the Tenant, relet the Premises, or any part of the Premises, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at the Landlord's option, hold the Tenant liable for any difference between the Rent that would have been payable under this Lease during the balance of the unexpired term, if this Lease had continued in force, and the net rent for such period realized by the Landlord by means of the reletting. If the Landlord's right of reentry is exercised following abandonment of the premises by the Tenant, then the Landlord may consider any personal property belonging to the Tenant and left on the Premises to also have been abandoned, in which case the Landlord may dispose of all such personal property in any manner the Landlord will deem proper and is relieved of all liability for doing so.

Attorney Fees

25. All costs, expenses and expenditures including and without limitation, complete legal costs incurred by the Landlord on a solicitor/client basis as a result of unlawful detainer of the Premises, the recovery of any rent due under the Lease, or any breach by the Tenant of any other condition contained in the Lease, will forthwith upon demand be paid by the Tenant as Additional Rent. All rents including the Base Rent and Additional Rent will bear interest at the rate of Twelve (12%) per cent per annum from the due date until paid.

Governing Law

26. It is the intention of the Parties to this Lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of California, without regard to the jurisdiction in which any action or special proceeding may be instituted.

Severability

27. If there is a conflict between any provision of this Lease and the applicable legislation of the State of California (the 'Act'), the Act will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Lease.

Assignment and Subletting

28. The Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the Premises, nor grant any license or part with possession of the Premises or transfer to any other person in whole or in part or any other right or interest under this Lease (except to a parent, subsidiary or affiliate of the Tenant), without the prior written consent of the Landlord in each instance, which consent will not be unreasonably withheld so long as the proposed assignment or sublease complies with the provisions of this Lease.
29. Notwithstanding any assignment or sublease, the Tenant will remain fully liable on this Lease and will not be released from performing any of the terms, covenants and conditions of this Lease.
30. If the Lease is assigned or if the Premises or any part of the Premises are sublet or occupied by anyone other than the Tenant, the Landlord may collect rent directly from the assignee, subtenant or occupant, and apply the net amount collected, or the necessary portion of that amount, to the rent owing under this Lease.
31. The prohibition against assigning or subletting without the consent required by this Lease will be constructed to include a prohibition against any assignment or sublease by operation of law.
32. The consent by the Landlord to any assignment or sublease will not constitute a waiver of the necessity of such consent to any subsequent assignment or sublease.

Bulk Sale

33. No bulk sale of goods and assets of the Tenant may take place without first obtaining the written consent of the Landlord, which consent will not be unreasonably withheld so long as the Tenant and the Purchaser are able to provide the Landlord with assurances, in a form satisfactory to the Landlord, that the Tenant's obligations in this Lease will continue to be performed and respected, in the manner satisfactory to the Landlord, after completion of the said bulk sale.

Maintenance

34. The Tenant will, at its sole expense, keep and maintain the Premises and appurtenances in good and sanitary condition and repair during the Term and any renewal of this Lease.
35. In particular, the Tenant will keep the fixtures in the Premises in good order and repair and keep the HVAC clean. The Tenant will, at Tenant's sole expense, make all required repairs to the plumbing, range, heating apparatus, and electric and gas fixtures whenever damage to such items will have resulted from the Tenant's misuse, waste, or neglect or that of the Tenant's employee, family, agent, or visitor.

36. The Tenant will be responsible at its own expense to replace all electric light bulbs, tubes, ballasts or fixtures serving the Premises.
37. Where the Premises has its own garden or grass area which is for the exclusive use of the Tenant and its guests, the Tenant will water, fertilize, weed, cut and otherwise maintain the garden or grass area in a reasonable condition including any trees or shrubs in or about the Premises.

Care and Use of Premises

38. The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Premises.
39. The Tenant will not make (or allow to be made) any noise or nuisance which, in the reasonable opinion of the Landlord, disturbs the comfort or convenience of other tenants.
40. The Tenant will not engage in any illegal trade or activity on or about the Premises.
41. The Landlord and Tenant will comply with standards of health, sanitation, fire, housing and safety as required by law.

Surrender of Premises

42. At the expiration of the lease term, the Tenant will quit and surrender the Premises in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear and damages by the elements excepted.

Hazardous Materials

43. The Tenant will not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire on the Premises or that might be considered hazardous by any responsible insurance company.

Rules and Regulations

44. The Tenant will obey all rules and regulations posted by the Landlord regarding the use and care of the Building, parking lot and other common facilities that are provided for the use of the Tenant in and around the Building on the Premises.

Access Inspection

45. The Premises has not been inspected by a Certified Access Specialist, and the Landlord will not have any responsibility to make, or liability for, alterations or repairs to meet accessibility standards.
46. A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

General Provisions

47. Any waiver by the Landlord of any failure by the Tenant to perform or observe the provisions of this Lease will not operate as a waiver of the Landlord's rights under this Lease in respect of any subsequent defaults, breaches or nonperformance and will not defeat or affect in any way the Landlord's rights in respect of any subsequent default or breach.
48. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Lease. All covenants are to be construed as conditions of this Lease.
49. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be Additional Rent and will be recoverable by the Landlord as rental arrears.
50. Where there is more than one Tenant executing this Lease, all Tenants are jointly and severally liable for each other's acts, omissions and liabilities pursuant to this Lease.
51. Time is of the essence in this Lease.
52. This Lease will constitute the entire agreement between the Landlord and the Tenant. Any prior understanding or representation of any kind preceding the date of this Lease will not be binding on either party to this Lease except to the extent incorporated in this Lease. In particular, no warranties of the Landlord not expressed in this Lease are to be implied.

IN WITNESS WHEREOF the Parties to this Lease have duly affixed their signatures under hand and seal, or by a duly authorized officer under seal, on this _____ day of _____, _____

Lokgen Corporation (Landlord)

(Witness)

Per: _____ (SEAL)

Not necessary

(Witness)

Bynate (Tenant)

Per: _____ (SEAL)



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF DEFAULT DUE TO NONPAYMENT

November 20, 2023

John Montgomery
Bynate, Inc.
21931 State Highway 33
Crows Landing, CA 95313

Re: Development Agreement Non-Compliance Notice

You are hereby notified that Bynate, Inc. has remained non-compliant with the terms of the approved Development Agreement (Agreement), entered into and signed on August 25, 2020, between Bynate, Inc. and Stanislaus County (County).

Payment of Community Benefit Rate Fees (CBR Fees) for Quarter 3 - 2023 in the amount of **\$30,150** has not been received by Stanislaus County, after several requests for payment (please see attachments). Pursuant to Section 15.1.5 of your approved Agreement, "Permittee's failure to make the contributions or Community Benefit Rate payments set out in Attachment E," shall constitute a default by Bynate, Inc. under the Agreement. The following notices have been sent to you:

- 10/31/2023: Notice of Failure
- 11/8/2023: Notice of Default

Pursuant to Section 15.5 of your approved Agreement, the defaulting party shall respond within 5 business days of the date of the Notice of Default, and shall provide reasonable evidence that it was never, in fact, in default or shall state that it will immediately commence to cure the identified default within 30 days of the Notice of Default, unless the Parties extend such time by mutual written consent. As of 11/20/2023, Bynate, Inc. has not provided reasonable evidence that it was never in default, nor stated that it will immediately commence to cure the identified default within 30 days of the Notice of Default.

As such, pursuant to Section 15.6.1 of your approved Agreement, the County shall have all rights and remedies provided by the Agreement, including, without limitation, the right to terminate the Agreement. The County also has the right to compel specific performance of the obligations of Bynate, Inc. under the Agreement, including, without limitation, the right to compel specific performance of the Community Benefits set forth in Attachment E of the Agreement.

ATTACHMENT C

Pursuant to Section 15.6.2 of your approved Agreement, this matter will now be referred to the Director of Planning and Community Development (Planning Director). If the Planning Director finds that the alleged default is not the subject of dispute resolution pursuant to Section 16 of the Agreement, the Planning Director shall set the matter for a public hearing by the Planning Commission in accordance with the provisions of the Development Agreement Ordinance (County Code Chapter 22.08).

If after such public hearing, the Planning Commission finds that Bynate, Inc. is in violation of the Agreement, the Planning Commission shall notify the Board of Supervisors of its findings and recommend such action as it deems appropriate.

Pursuant to Section 15.6.2 of the Development Agreement, if the Planning Commission reports a violation of the Agreement to the Board of Supervisors pursuant to this section, the Board of Supervisors may take one of the following actions:

- a) Approve the recommendation of the Planning Commission, instructing that action be taken as indicated therein in cases other than a recommendation to terminate or modify the Agreement; or
- b) Refer the matter back to the Planning Commission for further proceedings with or without instructions; or
- c) Schedule the matter for hearing before the Board of Supervisors if termination or modification of the Agreement is recommended

Effective as of the date of this letter, this matter is now being referred to the Planning Director for her review. The Default to Comply with the Agreement by Bynate, Inc. will be scheduled for public hearing with the Planning Commission at a date to be determined. Should the Planning Commission recommend termination of the Agreement, this matter will go before the Board of Supervisors in a duly noticed public hearing.

Because this matter has been referred to the Planning Director, it must now be resolved with the Planning and Community Development Department. Therefore, any and all questions and inquiries must be directed to Angela Freitas, angela@stancounty.com, or call (209) 525-6330.

Sincerely,



Erica May Inacio
Cannabis Program Manager

Enclosures: 10/31/2023: Notice of Failure
11/8/2023: Notice of Default

cc: Stanislaus County Planning & Community Development Department
Stanislaus County Treasurer-Tax Collector
Stanislaus County Counsel



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF FAILURE TO COMPLY WITH DEVELOPMENT AGREEMENT

October 31, 2023

John Montgomery
Bynate, Inc.
21931 State Highway 33
Crows Landing, CA 95313

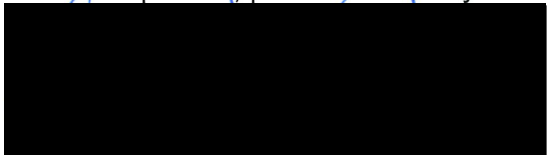
RE: Notice of Failure to Comply with Terms of the Development Agreement Due to Nonpayment of Community Benefit Fees for the Commercial Cannabis Business located at 21931 State Highway 33, Crows Landing

You are hereby notified that Bynate, Inc. has failed to comply with the terms of the Development Agreement (Agreement), entered and signed on August 13, 2019, between Bynate, Inc. and Stanislaus County (County).

Please be advised that your Quarter 3 - 2023 payment of Community Benefit Rate fees, in the amount of **\$30,000 or 8% of Gross Receipts, whichever is greater**, was due on or before **October 30, 2023**, and has not been received by the County. The total outstanding balance due for Quarter 3 - 2023 will be determined at the time that quarterly returns have been submitted. (Please see attached Community Benefit Balance Detail.)

You are hereby given an opportunity to cure said failure within three (3) business days, after which the County will escalate the matter and send a Notice of Default. Failure to cure the outstanding balance, may result in the County invoking further remedies through dispute resolution or hearing, including the accrual of late payment interest, request for specific performance, modification of the Agreement, termination of the Agreement, and/or any other remedies as prescribed by law.

If you have any questions, concerns, or would like to further discuss how you can cure this noncompliance, please contact by email at cannabis@stancounty.com, or call (209) 525-6271.



Enica May Inacio
Cannabis Program Manager

Enclosure: Bynate - Community Benefit Balance Detail

cc: Stanislaus County Treasurer-Tax Collector
Stanislaus County Planning & Community Development
Stanislaus County Counsel

From: [William Shirley](#)
To: jtmontgomery111@yahoo.com
Cc: [Erica Inacio](#)
Subject: Q3 2023 Community Benefit Rate Fees
Date: Monday, October 16, 2023 11:49:00 AM
Attachments: [image001.png](#)

Good morning,

This is a friendly reminder that Bynate's Quarter 3 – 2023 Community Benefit Rate Fees are due by October 30, 2023. Please refer to the table below for the current balance:

Period	Flat Rate	Gross Receipts	8% of Gross Receipts	Amount Due	Interest	Total Due	Credits	Payments	Total Balance
Q4 2022	\$28,750.00	\$288,153.47	\$23,052.28	\$28,750.00	\$1,293.75	\$30,043.75	\$0.00	\$28,500.00	\$1,543.75
Q1 2023	\$30,000.00	\$59,176.00	\$4,734.08	\$30,000.00	\$900.00	\$30,900.00	\$0.00	\$0.00	\$30,900.00
Q2 2023	\$30,000.00	*	*	\$30,000.00	\$450.00	\$30,450.00	\$6,429.35	\$0.00	\$24,020.65
Q3 2023	\$30,000.00	*	*	\$30,000.00	\$0.00	\$30,000.00	\$0.00	\$0.00	\$30,000.00
Total Balance									\$86,464.40

*Quarterly CDTFA returns have not been submitted to the County

Please let us know if you have any questions.

Thank you,



William Shirley
 Confidential Assistant IV
 Stanislaus County Chief Executive Office
 1010 10th Street, Suite 6800
 Modesto, CA 95354
 Desk: (209) 525-6271
 Cell: (209) 652-1514
shirleyw@stancounty.com

Bynate - Community Benefit Balance Detail

Period	Payment Date	Gross Receipts	8% of GR	DA Flat Rate	Total CBR Fees	Interest	Subtotal	Payments	Credits*	Balance Due
Q4 2022	5/12/2023	\$ 288,153.47	\$23,052.28	\$28,750	\$28,750	\$ 1,437.50	\$ 30,187.50	\$ 28,500.00	\$ -	\$ 1,687.50
Q1 2023		\$ 59,176.00	\$4,734.08	\$30,000	\$30,000	\$ 1,050.00	\$ 31,050.00	\$ -	\$ -	\$ 31,050.00
Q2 2023		\$ -	\$0.00	\$30,000	\$30,000	\$ 600.00	\$ 30,600.00	\$ -	\$ 6,429.35	\$ 24,170.65
Q3 2023		\$ -	\$0.00	\$30,000	\$30,000	\$ 150.00	\$ 30,150.00	\$ -	\$ -	\$ 30,150.00
	Total		\$27,786.36	\$118,750	\$118,750	\$ 3,237.50	\$121,987.50	\$ 28,500.00	\$ 6,429.35	\$ 87,058.15

*Credits Q2 2023 \$6,429.35 of prior payment of past due penalties

Updated: 10/31/2023 - ws



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
CHIEF EXECUTIVE OFFICER

Patrice M. Dietrich
ASSISTANT EXECUTIVE OFFICER/
CHIEF OPERATIONS OFFICER

Tina M. Rocha
ASSISTANT EXECUTIVE OFFICER

Ruben Imperial
ASSISTANT EXECUTIVE OFFICER

NOTICE OF DEFAULT DUE TO NONPAYMENT OF FEES

November 8, 2023

John Montgomery
Bynate, Inc.
21931 State Highway 33
Crows Landing, CA 95313

Re: Notice of Failure to Comply with Terms of Development Agreement Due to Nonpayment of Community Benefit Fees for Commercial Cannabis Business located at 21931 State Highway 33, Crows Landing

You are hereby notified that Bynate, Inc. is now in default with the terms and conditions of the Development Agreement (Agreement), entered and signed on August 13, 2019, between Bynate, Inc. and Stanislaus County (County).

Please be advised that your payment of Quarter 3 – 2023 Community Benefit Rate fees, in the amount of **\$30,000 or 8% of Gross Receipts, whichever is greater**, was due on or before October 30, 2023, and has not been received by the County. The total outstanding balance due for Quarter 3 – 2023, including interest, is now **\$30,150**. (Please see attached Community Benefit Balance Detail.)

Pursuant to Section 15.4 of the Agreement, after delivery of this Notice of Default, the parties, Bynate and County, shall meet and confer in good faith to address the default and attempt to cure such default within a reasonable time or modify the Agreement to remedy such default.

Pursuant to Section 15.5 of the Agreement, the defaulting party shall respond within five (5) business days of the date of the Notice of Default, and shall provide reasonable evidence that it was never, in fact, in default or shall state that it will immediately commence to cure the identified default and shall cure the identified default within thirty (30) days of the Notice of Default, unless the parties extend such time by mutual written consent.

Failure to take curative action may result in the County invoking further remedies through dispute resolution or hearing, including, without limitation, the accrual of late payment interest, request for specific performance, modification of the Agreement, termination of the Agreement, and/or any other remedies as prescribed by law.

If you have any questions, concerns, or would like to further discuss how you can cure this noncompliance matter, please contact cannabis@stancounty.com, or call (209) 525-6271.

Sincerely,



Erica May Inacio
Cannabis Program Manager

Enclosure: October 31, 2023 - Notice of Failure
Bynate - Community Benefit Balance Detail

cc: Stanislaus County Treasurer-Tax Collector
Stanislaus County Planning & Community Development
Stanislaus County Counsel

Recording Requested By And For The Benefit Of
And, When Recorded, Mail To:



County of Stanislaus
Department of Planning and
Community Development
1010 Tenth Street, Suite 3400
Modesto, CA 95354



Stanislaus, County Recorder
Donna Linder Co Recorder Office
DOC- 2019-0069927-00
Wednesday, OCT 09, 2019 10:07:54
Ttl Pd \$0.00 Rcpt # 0004335424
OLD/R2/1-7

Space Above Reserved for Recorder's Use

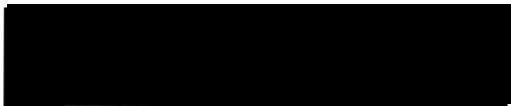
NOTICE OF ADMINISTRATIVE CONDITIONS AND RESTRICTIONS

PLEASE TAKE NOTICE that the COUNTY OF STANISLAUS approved the land use development described below subject to administrative conditions and restrictions, copies of which are attached to this notice and incorporated herein by reference. The conditions and restrictions affect development of the property or parcels described below and are binding upon the named landowners and their successors in interest.

- Property Owner(s): Lokgen Corporation
- Project Site Address: 21931 State Highway 33, between Fink Road and East Ike Crow Road, in the Crows Landing area.
- Assessor's Parcel Number(s): 027-012-055
- General Plan Designation: Commercial
- Zoning District: C-2 (General Commercial)
- Community Plan Designation: Commercial
- Project Name/Description: **Use Permit & Development Agreement Application No. PLN2018-0149 – Bynate** – Request to establish a commercial cannabis retail business within an existing 625 square-foot building in the C-2 (General Commercial) zoning district.

The undersigned duly authorized officer of Stanislaus County declares that the foregoing is true and correct under penalty of perjury under the laws of the State of California.

8/13/2019
Dated



*Kristin Doud, Senior Planner
Stanislaus County, Planning and
Community Development Department*

ATTACHMENTS:

- 1. Conditions of Approval
- 2. Project Area Map (For Illustrative Purposes Only)

ATTACHMENT D
20

NOTE: Approval of this application is valid only if the following conditions are met. This permit shall expire unless activated within 18 months of the date of approval. In order to activate the permit, it must be signed by the applicant and one of the following actions must occur: (a) a valid building permit must be obtained to construct the necessary structures and appurtenances; or (b) the property must be used for the purpose for which the permit is granted (Stanislaus County Ordinance 21.104.03).

CONDITIONS OF APPROVAL

USE PERMIT AND DEVELOPMENT AGREEMENT APPLICATION NO. PLN2018-0149 BYNATE

Department of Planning and Community Development

1. Use(s) shall be conducted as described in the application and supporting information (including the plot plan) as approved by the Planning Commission and/or Board of Supervisors and in accordance with other laws and ordinances.
2. Commercial cannabis activities as authorized by Title 21 and Chapter 6.78 of the Stanislaus County Code, with the exception of the 6.78.120(A)(7) setback to parks, shall be located and operated in compliance with all the requirements of Chapter 6.78 of the Stanislaus County Code and any other local requirements, and state laws and regulations, applicable to commercial cannabis activities.
3. Within 60 days of project approval, a complete Commercial Cannabis Activity Permit (CCA permit) shall be submitted to the Treasurer/Tax Collector.
4. If the Development Agreement, CCA permit, or state licenses associated with this land use entitlement are revoked, expired, or otherwise deemed ineffective, all commercial cannabis activities on the project site shall cease, until all applicable permits and agreements have been reinstated.
5. Commercial cannabis activities which have obtained their CCA permit shall have six months from the effective date of issuance of the permit to obtain the required licenses from the State. If all state licenses and approvals required to operate the commercial cannabis activity are not obtained within the six-month period, the CCA permit shall not be renewed.
6. Developer shall pay all Public Facilities Impact Fees and Fire Facilities Fees as adopted by Resolution of the Board of Supervisors. The fees shall be payable at the time of issuance of a building permit for any construction in the development project and shall be based on the rates in effect at the time of building permit issuance.
7. The applicant/owner is required to defend, indemnify, or hold harmless the County, its officers, and employees from any claim, action, or proceedings against the County to set aside the approval of the project which is brought within the applicable statute of limitations. The County shall promptly notify the applicant of any claim, action, or proceeding to set aside the approval and shall cooperate fully in the defense.
8. Prior to issuance of a CCA permit, the permittee shall provide a security plan, in accordance with Section 6.78.120(C) of the County Code, to the Sheriff's Department for review and approval. The security plan shall be reviewed annually or as often as deemed necessary by the Sheriff's Department.

9. Prior to issuance of a CCA permit, operator shall designate two individuals who shall be available at all times to communicate with the County Sheriff's Department and Code Enforcement.
10. Prior to issuance of a CCA permit, operator shall designate two persons who shall be available at all times to respond to community inquiries and complaints.
11. The permittee of a commercial cannabis activity shall provide the name, telephone number, and email address of a community relations contact to whom notice of problems associated with the commercial cannabis activity can be provided to all businesses and residences located within 200 feet of the commercial cannabis activity and make the information available online to the general public.
12. The Clerk of the Board shall record the executed Development Agreement and the Department of Planning and Community Development shall record a Notice of Administrative Conditions and Restrictions (NOACR) with the County Clerk-Recorder's Office within 30 days of project approval. The NOACR includes Conditions of Approval/Development Standards and Schedule, any adopted mitigation measures, and a project area map.
13. All proposed advertising signage shall be reviewed and approved by the Planning Director and building permits shall be obtained.
14. Should any archeological or human remains be discovered during development, work shall be immediately halted within 150 feet of the find until it can be evaluated by a qualified archaeologist. If the find is determined to be historically or culturally significant, appropriate mitigation measures to protect and preserve the resource shall be formulated and implemented. Construction activities shall not resume in the area until an on-site archeological mitigation program has been approved by a qualified archeologist. The Central California Information Center shall be notified if the find is deemed historically or culturally significant.

Department of Public Works

15. A grading, drainage, and erosion/sediment control plan for the project site shall be submitted for any building permit that will create a larger or smaller building footprint. The grading and drainage plan shall include the following information:
 - a. The plan shall contain drainage calculations and enough information to verify that all runoff will be kept from going onto adjacent properties and Stanislaus County road right-of-way. Public Works will review and approve the drainage calculations.
 - b. The grading drainage and erosion/sediment control plan shall comply with the current State of California National Pollutant Discharge Elimination System (NPDES) General Construction Permit. A Waste Discharge Identification Number (WDID) and a copy of the Notice of Intent (NOI) and the project's Storm Water Pollution Prevention Plan (SWPPP) shall be provided prior to the approval of any grading, if applicable.
 - c. The applicant of the grading permit shall pay the current Stanislaus County Public Works weighted labor rate for the plan review of the grading plan.

- d. The applicant of the grading permit shall pay the current Stanislaus County Public Works weighted labor rate for all on-site inspections. The Public Works inspector shall be contacted 48 hours prior to the commencement of any grading or drainage work on-site.
16. Prior to issuance of a Change of Occupancy Permit, the applicant shall make alley improvements on the alley in between State Route 33 and G Street. These improvements shall include asphalt paving to 12 feet wide at two inches of asphalt over four inches of Class II Aggregate Base. This paving shall extend from the alley access on 5th Street to the north property line of the project site. Improvement plans shall meet Stanislaus County Public Works Standards and Specifications.
17. An acceptable financial guarantee for the alley improvements shall be provided to the Department of Public Works prior to the issuance of a Change of Occupancy Permit. This requirement shall be waived if the alley is completed prior to the issuance of a Change of Occupancy Permit.
18. An Engineer's Estimate shall be provided for the road improvements so that the amount of the financial guarantee can be determined. This shall be waived if the improvements are accepted and installed prior to the issuance of a Change of Occupancy Permit.

Building Permits Division

19. Within six months of project approval, a change of Occupancy Permit shall be obtained to change the building from a "B" Business, which specifically lists "Barber and beauty shops," to a "M" Mercantile for "Retail and wholesale stores." This Change of Occupancy will require that at least one accessible entrance, one accessible route from entrance to primary function area, accessible parking, and one accessible route connecting accessible parking to the accessible entrance is provided on-site.
20. Building permits are required, and the project must conform with the California Code of Regulations, Title 24. All unpermitted portions of existing buildings, including unpermitted interior improvements on compartmentalized portions of the existing structure, shall obtain building permits and shall comply with the provisions of the code set forth in the most current adopted California Code of Regulations Title 24 or be demolished. It shall be unlawful for any person, firm, or corporation to erect, construct, alter, or occupy any building or portions of any buildings where unpermitted work exists.
21. All indoor cultivation, distribution, and storage areas shall be considered S-1 occupancies in accordance to the most current adopted California Building Code, California Code of Regulations Title 24.
22. All non-volatile manufacturing, processing, and packaging shall be considered F-1 occupancies in accordance to the most current adopted California Building Code, California Code of Regulations Title 24.
23. No change shall be made in the use or occupancy of any building unless such building is made to comply with the requirements of the most current adopted California Building Code, California Code of Regulations Title 24, Volumes 1 and 2 of Part 2.
24. Accessibility for existing buildings shall comply with Section 410 of the California Building Code, California Code of Regulations Title 24, Part 10.

25. Mercantile Occupancies with a total occupant load of 50 or less, including customers and employees, require one toilet facility, designed for use by no more than one person at a time, which shall be permitted for use by both sexes.
26. Required toilet facilities for employees and customers shall have a maximum travel distance not to exceed 500 feet.
27. Building permits shall be required for all new equipment installed.
28. All plans submitted shall be reviewed and/or designed by a California licensed architect or engineer.

Department of Environmental Resources

29. Industrial process wastewater must adhere to the conditions set by Stanislaus County Public Works. Any wastewater generated from business operation shall not be disposed into the OWTS. Only domestic wastewater must be discharged to the OWTS. As the cannabis regulations evolve, additional requirements and guidance documents may become available.
30. Any installation of a new on-site wastewater disposal system (OWTS) shall be designed according to type and/or maximum occupancy of the proposed structure to estimated waste/sewage design flow rate and in accordance to number of plumbing fixture units proposed within the building. The dispersal field shall be designed and sized using field data collected from soil profile and percolation tests performed at the locations proposed for dispersal field and the 100% future reserved.
31. If a new OWTS is to be installed, the system shall be designed to provide 100% of the original system for the "future expansion area."
32. The dispersal field shall not be paved over or covered by concrete or a material that is capable of reducing or prohibiting a possible evaporation of the sewer effluent.
33. If a new on-site wastewater disposal system is to be installed, it shall be installed as per engineer design. All setbacks required by this DER are to be met at time of installation of the system.

Patterson Fire Department

34. New and existing buildings shall be provided with approved address identification. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property, shall contrast with their background, and shall be no less than four inches tall (2016 CA Fire Code Section 505.1).
35. If the project site includes locked gates, Fire Department approved key boxes (Knox Key Box) shall be installed and secured in accordance with manufacturer's specifications and mounted to the right of the main entrance door with the top box no higher than six feet above grade (2016 CA Fire Code Section 506.1).
36. Fire extinguishers within the building shall be at least 2A10BC (2016 CA Fire Code Section 906).

Caltrans

37. No customer parking shall be permitted on State Route 33.

Central Valley Air Pollution Control District

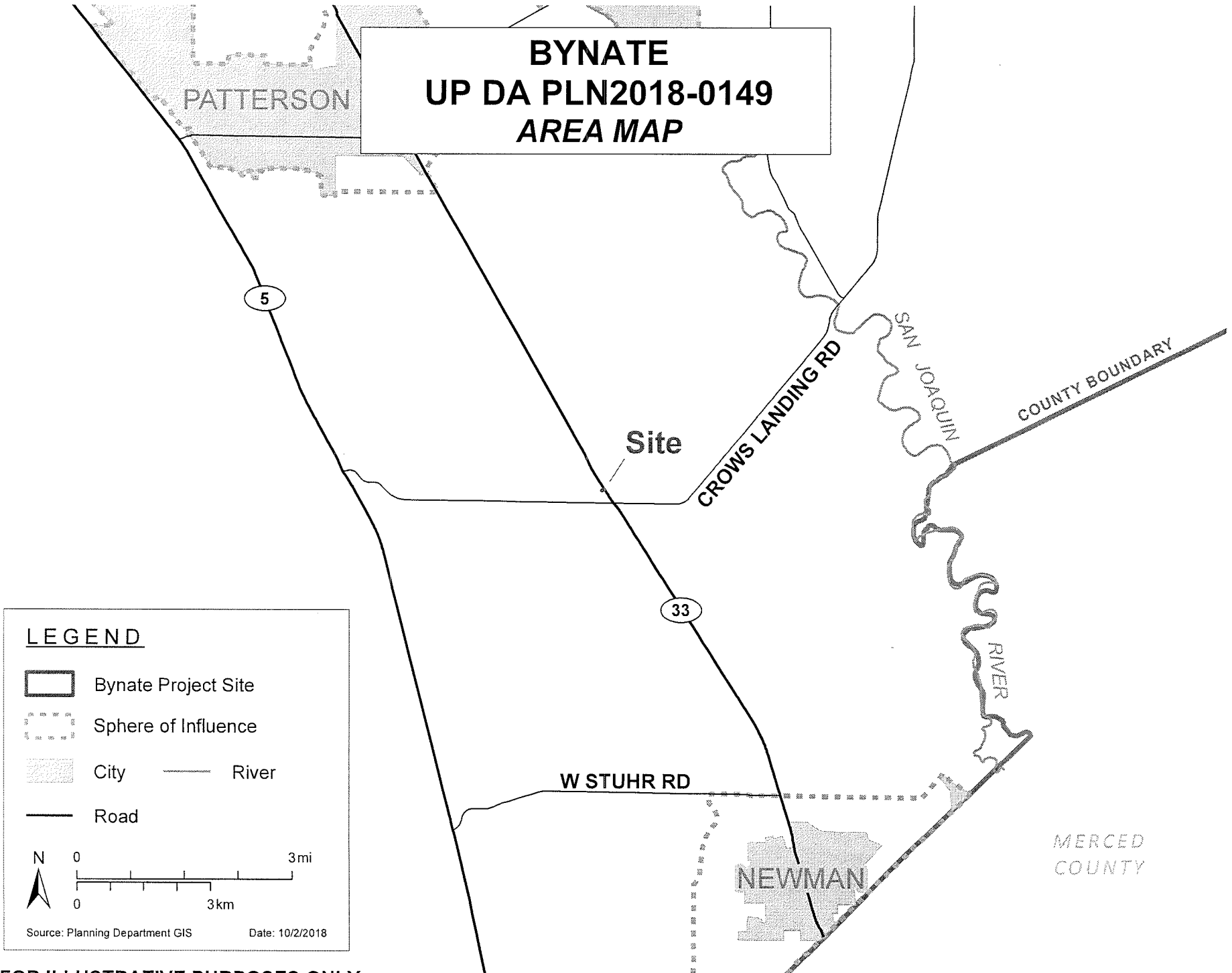
38. Prior to the start of construction, the property owner/operator shall contact the District's Small Business Assistance Office to determine if any Air District permits or if any other District rules or permits are required, including but not limited to an Authority to Construct (ATC).

Central Valley Regional Water Quality Control Board

39. Prior to ground disturbance or issuance of a building permit, the Central Valley Regional Quality Control Board shall be consulted to obtain any necessary permits and to implement any necessary measures, including but not limited to: Cannabis General Order, Construction Storm Water General Permit, Phase I and II Municipal Separate Storm Sewer System (MS4) Permits, Industrial Storm Water General Permit, Clean Water Act Section 404 Permit, Clean Water Act Section 401 Permit (Water Quality Certification), Waste Discharge Requirements, Dewatering Permit, Low or Limited Threat General NPDES Permit, NPDES Permit, or any other applicable Regional Water Quality Control Board permit.

*Please note: If Conditions of Approval/Development Standards are amended by the Planning Commission or Board of Supervisors, such amendments will be noted in the upper right-hand corner of the Conditions of Approval/Development Standards; new wording is in **bold**, and deleted wording will have a ~~line through it~~.*

BYNATE UP DA PLN2018-0149 AREA MAP



ATTACHMENT 2

FOR ILLUSTRATIVE PURPOSES ONLY

CANCELLATION OF DA FOR UP & DA NO. PLN2018-0149 – BYNATE

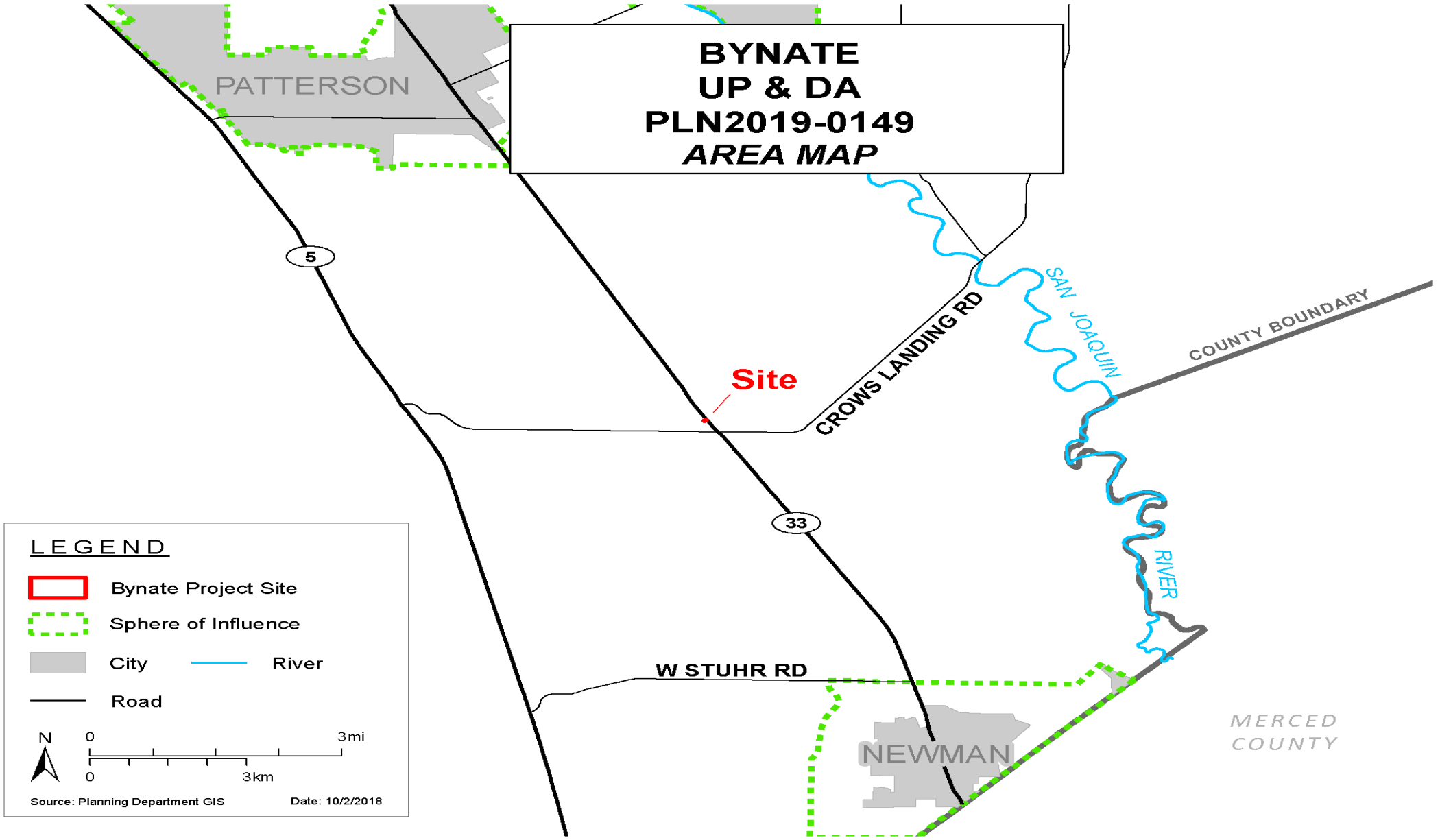
Planning Commission
February 15, 2024





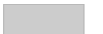


Overview

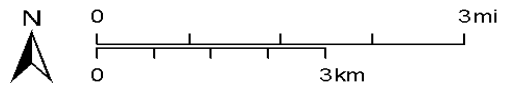
- Cancel the adopted Development Agreement (DA) of a commercial cannabis retail business
 - Due to nonpayment of fees required under the terms of the DA

**BYNATE
UP & DA
PLN2019-0149
AREA MAP**



LEGEND

-  Bynate Project Site
-  Sphere of Influence
-  City
-  River
-  Road



Source: Planning Department GIS Date: 10/2/2018

ATTACHMENT A

**BYNATE
UP & DA
PLN 2019-049
2023 AERIAL SITE MAP**



Development Agreement (DA) for Bynate

- **Community Benefit Rate**
 - Retail: ranged from \$105,000 to \$120,000 or 8% of gross receipts, whichever was greater
 - Paid \$748,682 to the County
- **Community Benefit Contribution**
 - Ranged from \$10,500 to \$12,000
 - Paid \$26,500 to the County

Development Agreement (DA) for Bynate

- Annual Inspection of the DA for 2022
 - Operator did not complete conditions of approval of use permit
 - Use Permit determined to be expired
 - Reapplication on October 7, 2022
 - Transfer of DA to new operator requested on March 2, 2023
 - Use permit placed on hold to allow for transfer
 - Transfer process was not completed
 - Ceased payments to County from Quarter 1 of 2023
 - 1 partial payment made in Quarter 2 of 2023

Default of the DA

- Operator now in a state of default with terms of DA
 - Current unpaid balance of \$118,245 for retail activities
 - Notified of failure to pay for each quarter delinquent, as required by Section 15 of the DA
 - Referred to the Planning Director for action in accordance with Title 22 of the County Code and adopted DA.

Cancellation of the DA

- Cancellation of Development Agreements
 - Chapter 22.08.020 of County Code allows for cancellation by the County of a DA due to noncompliance
 - Provided public hearings held in compliance with state law
 - Government Code 65865.1 also allows cancellation by County
 - Ability to terminate if terms not met by applicant
 - During public hearing operator must demonstrate compliance with DA
 - If not shown, Commission shall recommend to Board cancellation proceedings or terms and conditions to remedy the noncompliance
 - Staff is recommending that the DA be cancelled in total.

Environmental Review

- Original Use Permit & Development Agreement adopted Negative Declaration
 - Cancellation would remove authority for development
 - No impacts anticipated
 - Action of cancellation not subject to CEQA

Recommendation

- Staff Recommends that the Planning Commission Recommend Cancellation of the DA to the Board of Supervisors
 - Find Bynate in material breach of the terms of the DA
 - Find the Cancellation of each operation is consistent with Chapter 22.08 of County Code and Government Code 65865.1
 - Closure within 30 days of repeal of the ordinance
 - File of a notice Development Agreement Cancellation

Questions