



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: February 17, 2022

TO: Planning Commission

FROM: TC Travis Cleveland, Development Project Manager, Development Services

SUBJECT: Reconsideration Docket for February 24, 2022: Gateway Cannabis Outlet CUP, Project Number 660383

BACKGROUND

This project was a request for a Conditional Use Permit (CUP) to allow the operation of a 2,995-square-foot cannabis outlet in suites 107 and 108 within an existing three-story, 42,530-square-foot commercial building located at 995 Gateway Center Way in the IL-3-1 Zone within the Southeastern San Diego Community Plan area and City Council District 9.

PROPOSED ACTION:

1. Deny the appeal and affirm the decision of the Hearing Officer to approve Conditional Use Permit (CUP) No. 2411994 to operate a 2,995-square-foot cannabis outlet in suites 107 and 108 within an existing three-story, 42,530-square-foot commercial building located at 995 Gateway Center Way,
2. Deny the appeal and affirm the decision of the Hearing Officer to approve Conditional Use Permit (CUP) No. 2411994, with modifications, or
3. Grant the appeal, reverse the Hearing Officer's decision, and deny Conditional Use Permit (CUP) No. 2411994.

STAFF RECOMMENDATION:

Deny the appeal and affirm the decision of the Hearing Officer to approve Conditional Use Permit (CUP) No. 2411994 to operate a 2,995-square-foot cannabis outlet in suites 107 and 108 within an existing three-story, 42,530-square-foot commercial building located at 995 Gateway Center Way.

TIMELINE OF EVENTS

AUGUST 18, 2021

Hearing Officer – Item No. 2

1. Adopted Negative Declaration (MND) No. 660383
2. Approved Conditional Use Permit No. 2411994

SEPTEMBER 1, 2021

Three appeals of the Hearing Officer's decision to approve the project were filed.

NOVEMBER 4, 2021

Planning Commission – Item No. 1

The Planning Commission heard the item and voted 3-3 to deny the appeal and affirm the Hearing Officer's decision to approve the project. This motion failed; however, one commissioner was absent, and the item was continued to December 2, 2021 to allow this commissioner to review the November 4th hearing and vote on the appeal.

DECEMBER 2, 2021

Planning Commission, Item No. 1

The Planning Commission voted 4-3 to grant the appeal, reverse the Hearing Officer's decision, and deny Conditional Use Permit No. 2411994.

DECEMBER 9, 2021

Planning Commission – Non-Agenda Public Comment

The applicant requested reconsideration of the Planning Commission's December 2, 2021 decision, stating that the Commission based their decision on erroneous information. Commissioner Austin, one of the Planning Commissioners who voted to grant the appeal and reverse the Hearing Officer's decision, asked staff to place the request for reconsideration a future agenda.

January 20, 2022

Planning Commission – Item No. 1

[Motion by Commissioner Boomhower](#) to suspend the Permanent Rules of the Planning Commission, second by Vice Chair Whalen, vote 7-0.

[Motion by Commissioner Austin](#) to allow reconsideration of the item, second by Vice Chair Whalen based on the need to reassess possibly erroneous information, vote 6-1.

FEBRUARY 24, 2022

The Planning Commission will reconsider whether to deny the appeal and affirm the decision of the Hearing Officer to approve Conditional Use Permit (CUP) No. 2411994 to operate a 2,995-square-foot cannabis outlet in suites 107 and 108 within an existing three-story, 42,530-square-foot commercial building located at 995 Gateway Center Way or grant the appeal, reverse the Hearing Officer's decision, and deny Conditional Use Permit (CUP) No. 2411994.

Legal Standard for Appeal of Hearing Officer Decision

Pursuant to [SDMC Section 112.0506\(c\)](#), an appeal of a Hearing Officer decision may only be granted with evidence supporting one of the following findings:

1. Factual Error. The statements or evidence relied upon by the decision maker when approving, conditionally approving, or denying a permit, map, or other matter were inaccurate; or
2. New Information. New information is available to the applicant or the interested person that was not available through that person's reasonable efforts or due diligence at the time of the decision; or
3. Findings Not Supported. The decision maker's stated findings to approve, conditionally approve, or deny the permit, map, or other matter are not supported by the information provided to the decision maker; or
4. Conflicts. The decision to approve, conditionally approve, or deny the permit, map, or other matter is in conflict with a land use plan, a City Council policy, or the Municipal Code.

Pursuant to SDMC [section 112.0506\(c\)](#), the Planning Commission can only deny the appeal and uphold approval of the project if none of the above findings are supported by sufficient evidence or grant the appeal and deny approval of the project if it finds one of the above findings is supported by sufficient evidence.

ATTACHMENTS:

1. Draft Permit Resolution with Findings
2. Draft Permit with Conditions

REFERENCES:

3. PC Report No. PC-21-050, Gateway Cannabis Outlet Appeal, please find on the City's Website at: [Part 1](#), [Part 2](#)

PLANNING COMMISSION
RESOLUTION NO. XXXX
CONDITIONAL USE PERMIT NO. 2411994
GATEWAY CANNABIS OUTLET CUP - PROJECT NO. 660383

WHEREAS, GATEWAY SMP LLC, a California Limited Liability Company, Owner, and HARVEST OF SAN DIEGO LLC, a California Limited Liability Company, Permittee, filed an application with the City of San Diego for a Conditional Use Permit to allow the operation of a 2,995-square-foot Cannabis Outlet in Suites 107 and 108 within an existing three-story, 42,530-square-foot commercial building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 2411994), on portions of a 4.10-acre site; and

WHEREAS, the project site is located at 995 Gateway Center Way in the IL-3-1 Zone, Airport Influence Area (SDIA Lindbergh Field – Review Area 1), Airport Federal Aviation Authority Part 77 Noticing Area (SDIA – Lindbergh Field 200 feet), Airport Land Use Compatibility Plan Noise Contours (SDIA – 65-70 CNEL), Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Fire – Brush Management (100-Foot Setback and 300-Foot Buffer), and Fire – Very High Fire Hazard Severity Zone within the Southeastern San Diego Community Plan area; and

WHEREAS, the project site is legally described as Lots 19 and 20 of Gateway Center East Unit No. 1, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11512, filed in the Office of the County Recorder of San Diego County, May 14, 1986; and

WHEREAS, on August 18, 2021, the Hearing Officer of the City of San Diego approved Conditional Use Permit No. 2411994 pursuant to the Land Development Code of the City of San Diego; and

WHEREAS, appeals of the Hearing Officer's decision were filed by Francine Maxwell, Shaun Chamberlin, and Charles Alexander on September 1, 2021 (Appeals); and

WHEREAS, on November 4, 2021, the Planning Commission of the City of San Diego considered the Appeals and Conditional Use Permit No. 2411994 pursuant to the Land Development Code of the City of San Diego, said hearing being continued to December 2, 2021;

WHEREAS on December 2, 2021, the Planning Commission of the City of San Diego granted the Appeals, reversing the Hearing Officer's decision, and denying Conditional Use Permit No. 2411994;

WHEREAS on December 9, 2021, during non-agenda public comment at the Planning Commission hearing, Suzanne Varco, a representative for the Permittee, requested a reconsideration of the December 2, 2021 decision for Conditional Use Permit 2411994, and the request was supported by the Planning Commission to place Conditional Use Permit No. 2411994 on a future agenda pursuant to Section 2.6 of the Permanent Rules of the Planning Commission;

WHEREAS on January 20, 2022, the Planning Commission suspended the Permanent Rules and reconsidered the December 2, 2021 denial of Conditional Use Permit 2411994;

WHEREAS on February 24, 2022, the Planning Commission denied the Appeals, affirmed the Hearing Officer's decision and approved Conditional Use Permit 2411994;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of San Diego, that it adopts the following findings with respect to Conditional Use Permit No. 2411994:

A. CONDITIONAL USE PERMIT FINDINGS [SDMC Section 126.0305]

1. The proposed development will not adversely affect the applicable land use plan.

The project is a request for a Conditional Use Permit (CUP) to allow the operation of a 2,995-square-foot Cannabis Outlet in Suites 107 and 108 within an existing three-story, 42,530-square-foot commercial building located at 995 Gateway Center Way. The 4.10-acre site is in the IL-3-1 Zone, Airport Influence Area (SDIA Lindbergh Field – Review Area 1), Airport Federal Aviation Authority Part 77 Noticing Area (SDIA – Lindbergh Field 200 feet), Airport Land Use Compatibility Plan Noise Contours (SDIA – 65-70 CNEL), Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Fire – Brush Management (100-Foot Setback

and 300-Foot Buffer), and Fire – Very High Fire Hazard Severity Zone within the Southeastern San Diego Community Plan area.

The project site is within the Industrial Employment land use category per the Land Use and Street System Map (Figure LU-2) of the General Plan. IL-3-1 zone allows a mix of light industrial, office, and commercial uses. Pursuant to SDMC section 131.0622, retail sales and commercial services are permitted uses in the IL-3-1 Zones. The Southeastern San Diego Community Plan (Community Plan) designates the site as Business Park within the Commercial, Employment and Industrial land use classification. Per the Community Plan, the Business Park designation represents employment-generating uses that will both create jobs and a pleasant and safe streetscape environment. Intended uses include office, research and development, and light manufacturing; storage and distribution are discouraged to minimize truck traffic; limited retail is allowed, to augment commercial uses and serve nearby residential area, but is not intended as a primary use. The proposed Cannabis Outlet is classified as retail sales use category, and will be one of the 12 tenants in the commercial building, occupying 7% of the entire premises; therefore, it will not be the primary use of the premises.

The proposed Cannabis Outlet is allowed in the IL-3-1 zone with a CUP pursuant to SDMC sections 131.0622 and 141.0504. The proposed project will promote the policies of the General Plan and the Community Plan because the Cannabis Outlet will supply jobs and encourage/facilitate commerce within the San Diego region. Therefore, the proposed Cannabis Outlet is a compatible use at this location with a CUP, it is consistent with the Community Plan land use policies and will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The project proposes to operate a 2,995-square-foot Cannabis Outlet within an existing 42,530-square-foot commercial building, located at 995 Gateway Center Way. The project proposes interior improvements to an existing tenant space, including entry/exit areas, waiting areas, lobby, cannabis retail sales floor, employee break room, manager's office, janitor's closet, restrooms, storage room, express room, vault/fulfillment room, product transfer corridor, vendor receiving area. Construction of the project authorized through this permit will be subject to all adopted building, electrical, mechanical, fire and plumbing codes, which will be enforced through plan review and building inspections completed by the City's building inspectors.

The proposed development will not be detrimental to the public's health, safety, and welfare because the discretionary permit controlling the development and continued use of this site contains specific regulatory conditions of approval. These regulations, which are implemented and enforced through the permit, are specifically intended to reduce, mitigate and/or prevent all adverse impacts to the public and community at large. The operation of the Cannabis Outlet in the IL-3-1 Zone is allowed with a CUP at this location and consistent with the goals and policies of the Southeastern San Diego Community Plan.

Pursuant to SDMC Section 141.0504, Cannabis Outlets are limited to no more than four per Council District (CD), and 36 city-wide, within commercial and industrial zones in order to minimize the impact on the City and residential neighborhoods. A total of three CUPs for Cannabis Outlets have been approved in Council District 9; hence, there remains capacity for one additional Cannabis Outlet to be approved in Council District 9. Cannabis Outlets require compliance with SDMC Section 141.0504, which requires a 1,000-foot separation, measured in accordance with SDMC Sections 141.0504 and 113.0225, from resource and population-based city parks, other Cannabis Outlets, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, residential care facilities, and schools including private or public institutions of learning providing instruction for kindergarten and grades 1 to 12. There is also a minimum distance requirement of 100 feet from a residentially zoned property or lot. City staff has reviewed the 100/1,000-foot radius map and the 100/1,000-foot radius map spreadsheet submitted by the applicant identifying all the existing surrounding uses, measured uses in accordance with SDMC Section 113.0225, and determined that the proposed Cannabis Outlet complies with the minimum separation requirements between uses and residentially zoned lot or premises.

The project is required to provide 15 parking spaces for the Cannabis Outlet use and maintain a minimum of 154 off-street parking for all uses on the premises, totaling 169 parking spaces required at the site. The project proposes to reconfigure the existing parking to provide 170 parking spaces to satisfy the parking requirement as shown on Exhibit 'A'. Public improvements include the removal of the two existing driveways and the installation of two 24-foot wide City standard driveways, located adjacent to the site on Gateway Center Way, as well as the reconstruction of sidewalk with standard concrete sidewalk along the property frontage on Gateway Center Way, to the satisfaction of the City Engineer. Based on the above analysis, project features and conditions of approval, the proposed development will not be detrimental to the public health, safety, and welfare.

The proposed Cannabis Outlet is subject to specific operational and security requirements and restrictions as set forth in SDMC Section 141.0504(b) through (m), which have also been incorporated as conditions in the CUP including prohibition of consultation by medical professionals on-site; prohibition of the use of specified vending machines except by a responsible person (as defined by the SDMC); provision of interior and exterior lighting, operable cameras, alarms, security guard; restriction of hours of operation to between 7:00 a.m. and 9:00 p.m. daily; maintenance of area and adjacent public sidewalks free of litter and graffiti, and removal of graffiti within 24 hours; restriction of signage to business name, two-color signs, and alphabetic characters; and signage advertising cannabis may not be visible from the public right-of-way. Cannabis Outlets must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation. The CUP is valid for five years, however, may be revoked if the use violates the terms, conditions, lawful requirements, or provision of the permit.

Construction of the project authorized through this permit will be subject to all adopted building, electrical, mechanical, fire and plumbing codes, which will be enforced through plan review and building inspections completed by the City's building inspectors. Furthermore, this project has been reviewed pursuant to the California Environmental

Quality Act, and the environmental analysis did not find any significant impacts to the public health and safety. Based on the above analysis, the proposed development would not be detrimental to the public health, safety, and welfare.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The project proposes to operate a 2,995-square-foot Cannabis Outlet within an existing 42,530-square-foot commercial building, located at 995 Gateway Center Way. The project proposes interior improvements to an existing tenant space, including entry/exit areas, waiting areas, lobby, cannabis retail sales floor, employee break room, manager's office, janitor's closet, restrooms, storage room, express room, vault/fulfillment room, product transfer corridor, vendor receiving area. Building improvements of the project authorized through this permit will be subject to all adopted building, electrical, mechanical, fire and plumbing codes, which will be enforced through plan review and building inspections completed by the City's building inspectors.

Pursuant to SDMC section 141.0504, Cannabis Outlets are limited to no more than four per Council District (CD), and 36 city-wide, within commercial and industrial zones in order to minimize the impact on the City and residential neighborhoods. A total of three CUPs for Cannabis Outlets have been approved in Council District 9; hence, there remains capacity for one additional Cannabis Outlet to be approved in Council District 9. Cannabis Outlets require compliance with SDMC Section 141.0504, which requires a 1,000-foot separation, measured in accordance with SDMC Sections 141.0504 and 113.0225, from resource and population-based city parks, other Cannabis Outlets, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, residential care facilities, and schools including private or public institutions of learning providing instruction in kindergarten grades 1 to 12. There is also a minimum distance requirement of 100 feet from a residentially zoned property or lot. City staff has reviewed the 100/1,000-foot radius map and the 100/1,000-foot radius map spreadsheet submitted by the applicant identifying all the existing surrounding uses, measured uses in accordance with SDMC Section 113.0225, and determined that the proposed Cannabis Outlet complies with the minimum separation requirements between uses and residentially zoned lot or premises.

Iglesia Del Nazareno is a church as defined in SDMC Section 113.0103, located at 3535 Market Street and within the 1,000-radius of the proposed Cannabis Outlet. This church is approximately 854 feet from the project site, measured property line to property line. The proposed Cannabis Outlet is located on top of a hillside with a slope gradient between 142 to 165 feet high, which is considered natural topographic barrier that impedes direct access to the proposed Cannabis Outlet. Per SDMC Section 113.0225(c), when measuring distance between uses, natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses can be taken into consideration. In such case, the distance is measured as the most direct route around the barrier in a manner that establishes direct access. A direct public route to the church from the proposed Cannabis Outlet would be approximately 2,478 feet, greater than

1,000 feet. Therefore, the proposed project complies with the minimum separation requirements.

Dennis V. Allen Neighborhood Park is a population-based city park defined in the Recreation Element of the City of San Diego General Plan. It is located at 800 Boundary Street and approximately 1,014 feet from the project site, measured horizontally in a straight line between the two closest points of property line to property line pursuant to SDMC Section 113.0225. The distance measurement is over the required 1,000-foot buffer, therefore, the proposed Cannabis Outlet is in compliance with the minimum separation requirements.

The permits for the project include various conditions and corresponding exhibits of approval relevant to achieving compliance with the SDMC relative to parking, signage, lighting, security measures, hours of operation, and site maintenance. No variance or deviations are requested as part of this application. Therefore, the proposed development will comply with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location.

The project is a request for a CUP to allow the operation of a Cannabis Outlet within an existing commercial building located at 995 Gateway Center Way. The 4.10-acre site is in the IL-3-1 Zone, Airport Influence Area (SDIA Lindbergh Field – Review Area 1), Airport Federal Aviation Authority Part 77 Noticing Area (SDIA – Lindbergh Field 200 feet), Airport Land Use Compatibility Plan Noise Contours (SDIA – 65-70 CNEL), Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Fire – Brush Management (100-Foot Setback and 300-Foot Buffer), and Fire – Very High Fire Hazard Severity Zone within the Southeastern San Diego Community Plan area.

The site is currently improved with a three-story commercial building constructed in 1989. The existing uses of the proposed tenant spaces are offices; other existing uses on site include medical, research, and professional offices; surrounding uses include retail, medical clinics, and light industrial businesses. Pursuant to SDMC Section 141.0504, Cannabis Outlets are limited to no more than four per Council District (CD), and 36 city-wide, within commercial and industrial zones to minimize the impact on the City and residential neighborhoods. A total of three CUPs for Cannabis Outlets have been approved in Council District 9; hence, there remains capacity for one additional Cannabis Outlet to be approved in Council District 9.

Cannabis Outlets require compliance with SDMC Section 141.0504, which requires a 1,000-foot separation, measured in accordance with SDMC Sections 141.0504 and 113.0225, from resource and population-based city parks, other Cannabis Outlets, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, residential care facilities, and schools including private or public institutions of learning providing instruction in kindergarten to grades 1 to 12. There is also a minimum distance requirement of 100 feet from a residentially zoned property or lot. City staff has reviewed the 100/1,000-foot radius map and the 100/1,000-foot radius map spreadsheet submitted by the applicant identifying all the existing surrounding uses, measured uses in accordance with SDMC Section 113.0225, and determined that the proposed Cannabis

Outlet complies with the minimum separation requirements between uses and residentially zoned lot or premises.

Iglesia Del Nazareno is a church as defined in SDMC Section 113.0103, located at 3535 Market Street and within the 1,000-radius of the proposed Cannabis Outlet. This church is approximately 854 feet from the project site, measured property line to property line. The proposed Cannabis Outlet is located on top of a hillside with a slope gradient between 142 to 165 feet high, which is considered natural topographic barrier that impedes direct access to the proposed Cannabis Outlet. Per SDMC Section 113.0225(c), when measuring distance between uses, natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses can be taken into consideration. In such case, the distance is measured as the most direct route around the barrier in a manner that establishes direct access. A direct public route to the church from the proposed Cannabis Outlet would be greater than 1,000 feet. Therefore, the proposed project is in compliance with the minimum separation requirements.

Dennis V. Allen Neighborhood Park is a population-based city park defined in the Recreation Element of the City of San Diego General Plan. It is located at 800 Boundary Street and approximately 1,014 feet from the project site, measured horizontally in a straight line between the two closest points of property line to property line pursuant to SDMC Section 113.0225. The distance measurement is over the required 1,000-foot buffer; therefore, the proposed Cannabis Outlet complies with the minimum separation requirements.

The project site is within the Industrial Employment land use category per the Land Use and Street System Map (Figure LU-2) of the General Plan. IL-3-1 zone allows a mix of light industrial, office, and commercial uses. Pursuant to SDMC Section 131.0622, retail sales and commercial services are permitted uses in the IL-3-1 Zones. The Southeastern San Diego Community Plan (Community Plan) designates the site as Business Park within the Commercial, Employment and Industrial land use classification. Per the Community Plan, the Business Park designation represents employment-generating uses that will both create jobs and a pleasant and safe streetscape environment. Intended uses include office, research and development, and light manufacturing; storage and distribution are discouraged to minimize truck traffic; limited retail is allowed, to augment commercial uses and serve nearby residential area, but is not intended as a primary use. The proposed Cannabis Outlet is classified as retail sales use category, and will be one of the 12 tenants in the commercial building, occupying 7% of the entire premises; therefore, it will not be the primary use of the premises.

The proposed Cannabis Outlet is consistent with the underlying IL-3-1 Zone and Community Plan land use designation and objectives of encouraging a range of commercial goods and services, and with a CUP, is a compatible use with the surrounding development. Therefore, based on the above analysis, the proposed use is appropriate at the proposed location.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, that the Appeals are denied, the August 18, 2021 decision of the Hearing Officer is affirmed, and Conditional Use Permit No. 2411994 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 2411994, a copy of which is attached hereto and made a part hereof.

Travis Cleveland
Development Project Manager
Development Services

Adopted on: February 24, 2022

IO No.: 24008573

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION
501

WHEN RECORDED MAIL TO
PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

INTERNAL ORDER NUMBER: 24008573

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL USE PERMIT NO. 2411994
GATEWAY CANNABIS OUTLET CUP - PROJECT NO. 660383
PLANNING COMMISSION

This Conditional Use Permit No. 2411994 ("Permit") is granted by the Planning Commission of the City of San Diego to Gateway SMP LLC, a California Limited Liability Company, Owner, and Harvest of San Diego, LLC, a California Limited Liability Company, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 4.10-acre site is located at 995 Gateway Center Way in the IL-3-1 Zone, Airport Influence Area (SDIA Lindbergh Field – Review Area 1), Airport Federal Aviation Authority Part 77 Noticing Area (SDIA – Lindbergh Field 200 feet), Airport Land Use Compatibility Plan Noise Contours (SDIA – 65-70 CNEL), Special Flood Hazard Area (100 Year Floodway and 100 Year Floodplain), Fire – Brush Management (100-Foot Setback and 300-Foot Buffer), and Fire – Very High Fire Hazard Severity Zone within the Southeastern San Diego Community Plan area. The project site is legally described as: Lots 19 and 20 of Gateway Center East Unit No. 1, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 11512, filed in the Office of the County Recorder of San Diego County, May 14, 1986.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to operate a Cannabis Outlet, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated February 24, 2022, on file in the Development Services Department.

The project shall include:

- a. Operation of a 2,995-square-foot Cannabis Outlet in Suites 107 and 108 within an existing three-story, 42,530-square-foot commercial building;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking; and
- d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act

[CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by March 10, 2025.
2. This Conditional Use Permit [CUP] and corresponding use of this site shall expire on February 24, 2027.
3. The utilization of this CUP to sell cannabis is contingent upon (but not limited to) the following:
 - a. The existence of a valid license to sell cannabis at this location by the California Department of Cannabis Control (DCC). The issuance of this CUP does not guarantee that the DCC will grant a license for this location.
 - b. Compliance with Chapter 4, Article 2, Division 15 of the San Diego Municipal Code, including payment of any fees enacted pursuant to SDMC 42.1506.
 - c. Timely payment of all current and future Cannabis Business Tax owed pursuant to Chapter 3, Article 4, Division 1 of the San Diego Municipal Code.
 - d. Possession of a Business Tax Certificate.
 - e. Fulfillment of all permit conditions.
 - f. Continued compliance with all other applicable federal, state, and local laws.
4. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
5. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.

6. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.

7. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee

shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

BUILDING OFFICIAL REQUIREMENT:

13. Prior to the commencement of operations granted by this Permit, the Owner/Permittee shall be granted occupancy for this cannabis use through a building permit, consistent with all California Codes and Regulations in effect at the time of building permit, satisfactory to the Building Official.

CLIMATE ACTION PLAN REQUIREMENTS:

14. Owner/Permittee shall comply with the Climate Action Plan (CAP) Consistency Checklist stamped as Exhibit "A." Prior to issuance of any construction permit, all CAP strategies shall be noted within the first three (3) sheets of the construction plans under the heading "Climate Action Plan Requirements" and shall be enforced and implemented to the satisfaction of the Development Services Department.

ENGINEERING REQUIREMENTS:

15. Prior to the issuance of any construction permit, the Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement (EMRA) for the landscape and irrigation located within the City's Right-Of-Way, satisfactory to the City Engineer.

16. Prior to the issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the removal of the two existing driveways and the installation of two 24-foot wide City standard driveways, adjacent to the site on Gateway Center Way, satisfactory to the City Engineer.

17. Prior to the issuance of any construction permit, the Owner/Permittee shall assure by permit and bond the reconstruction of sidewalk, with standard concrete sidewalk along the property frontage on Gateway Center Way, satisfactory to the City Engineer.

18. Prior to the issuance of any construction permit, the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards.

LANDSCAPE REQUIREMENTS:

19. Prior to issuance of any construction permit, the Owner/Permittee shall submit complete construction documents for the revegetation & hydro-seeding of all disturbed land in accordance with the City's Landscape Standards & Storm Water Design Manual to the Development Services Department for approval. All plans shall be in substantial conformance to this permit (including Environmental Conditions) & Exhibit "A", filed in the Development Services Department.

20. Prior to issuance of any public improvement permit, the Owner/Permittee shall submit complete landscape construction documents for right-of-way improvements to the Development Services Department for approval. Improvement plans shall be designed where all hardscape, driveways, utilities, drains, water, & sewer laterals shall not prohibit the required placement of trees. Include a scaled symbol, label, & dimension the required placement of the 40-sqft tree area/root zone around each tree, unless otherwise approved per SDMC 142.0403(b)(5).

21. Prior to issuance of any construction permit, the Owner/Permittee shall submit complete landscape construction documents which are consistent with the City's Landscape Standards to the Development Services Department for approval. All plans shall be in substantial conformance with Exhibit 'A', filed in the DSD. Construction plans shall be designed where all hardscapes & utilities shall not prohibit the required placement of trees. Include a scaled symbol, label, & dimension the required placement of the 40-sqft tree area/root zone around each tree.

22. The Owner/Permittee shall be responsible for the maintenance of all landscape improvements shown on the approved plans, including the right-of-way, unless long-term maintenance of said landscaping will be the responsibility of another entity approved by the Development Services Department. All required landscape shall be maintained consistent with the City's Landscape Standards in a disease, weed, and litter free condition at all times. Severe pruning or "topping" of trees is not permitted.

23. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction documents is damaged or removed during demolition or construction, the Owner/Permittee shall repair and/or replace in kind, and in an equivalent size per the approved documents to the satisfaction of the Development Services Department within 30 days of damage or Final Inspection.

PLANNING/DESIGN REQUIREMENTS:

24. Lighting shall be provided to illuminate the interior, facade, and the immediate surrounding area of the cannabis outlet, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented to deflect light away from adjacent properties.

25. Security shall be provided at the cannabis outlet which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the premises during business hours. The security guard shall only be engaged in activities related to providing security for the facility, except on an incidental basis.

26. The Owner/Permittee shall provide a sufficient odor absorbing ventilation and system capable of minimizing excessive or offensive odors emanating outside of the permitted cannabis outlet to the satisfaction of the Development Services Department.

27. Signage: Primary signs shall be posted on the outside of the cannabis outlet and shall only contain the name of the business, which shall contain only alphabetic characters, and shall be limited to two colors. Secondary signs advertising cannabis, window signs and any display visible

from the public right-of-way, are not permitted. No marketing or advertising for cannabis or cannabis products shall be displayed visible from the public right-of-way. All cannabis licensees, and any person acting on behalf of a licensee, must comply with the State of California statutes and regulations governing commercial cannabis advertising and/or promoting.

28. The name and emergency contact phone number of the designated responsible managing operator shall be posted in a location visible from outside the cannabis outlet in character size at least two inches in height.

29. The cannabis outlet shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.

30. The use of vending machines which allow access to cannabis and cannabis products except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to cannabis and cannabis products without a human intermediary.

31. An annual operating permit shall be obtained as required pursuant to San Diego Municipal Code Chapter 4, Article 2, Division 15.

32. Deliveries shall be permitted as an accessory use only from the cannabis outlet with a valid Conditional Use Permit unless otherwise allowed pursuant to state law.

33. The cannabis outlet, adjacent public sidewalks, and areas under the control of the cannabis outlet, shall be maintained free of litter and graffiti at all times.

34. The Owner/Permittee shall provide daily removal of trash, litter, and debris of the premises. Graffiti shall be removed from the premises within 24 hours.

35. Consultations by medical professionals shall not be a permitted accessory use at the cannabis outlet.

TRANSPORTATION REQUIREMENTS:

36. All automobile, motorcycle and bicycle parking spaces must be constructed in accordance with the requirements of the SDMC. All on-site parking stalls and aisle widths shall be in compliance with the requirements of the City's Land Development Code and shall not be converted an/or utilized for any other purpose, unless otherwise authorized in writing by the appropriate City decision maker in accordance with the SDMC.

PUBLIC UTILITIES DEPARTMENT REQUIREMENTS:

37. Prior to the issuance of any construction permit, all domestic, irrigation, and fire water lines serving this development must pass through a permitted, private, above ground, backflow prevention device (BFPD).

38. Prior to the issuance of any construction permit, any existing sewer lateral to be reused must be videoed and inspected by a California licensed plumber to verify and attest to (via a signed statement on company letterhead) that: all of the following: the lateral has an appropriate cleanout, is in good condition, is free of all debris, is properly connected to a public sewer main, and is suitable for reuse. If the lateral does not meet these requirements, it must be cleaned, repaired if necessary, and re-inspected or abandoned, capped, and replaced with a new permitted lateral.

39. Prior to the issuance of the Certificate of Occupancy, any private improvements within the public ROW (including but not limited to: landscaping, enhanced paving, private non-irrigation utilities, or structures of any kind) that could inhibit the City's right to access, maintain, repair, or replace its public water and sewer utilities must be removed unless the Owner/Permittee has a City approved County recorded EMRA which authorizes that specific private improvement to be placed in that specific location.

40. No trees or shrubs exceeding three (3) feet in height at maturity shall be installed or remain within ten (10) feet of any public sewer facilities or within five (5) feet of any public water facilities.

INFORMATION ONLY:

- The issuance of this discretionary permit alone does not allow the immediate commencement or continued operation of the proposed use on site. Any operation allowed by this discretionary permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.
- Cannabis businesses that operate or provide services within the City of San Diego are liable for a monthly gross receipts tax. As referenced in San Diego Municipal Code Section [34.0103\(b\)](#), taxable activities include but are not limited to, transporting, manufacturing, cultivating, packaging, or retail sales of cannabis and any ancillary products in the City. For additional information, contact the Office of the City Treasurer at (619) 615-1580.

APPROVED by the Planning Commission of the City of San Diego on February 24, 2022 and Resolution Number XXXX.

ATTACHMENT 2

Permit Type/PTS Approval No.: Conditional Use Permit No. 2411994
Date of Approval: February 24, 2022

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES DEPARTMENT

Travis Cleveland
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.

Gateway SMP LLC

A California Limited Liability Company
Owner

By _____
NAME
TITLE

Harvest of San Diego, LLC

A California Limited Liability Company
Permittee

By _____
NAME
TITLE

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**