

September 19, 2024

Planning and Zoning Commission
City of Apache Junction

Re: Project Narrative: Amendment to Conditional Use Permit (CUP) to continue the use of an existing marijuana cultivation and infusion kitchen under new ownership.

Dear Planning and Zoning Commission:

This firm represents Border Health, Inc. ("Border Health") and Cortex Holdings, LLC ("Cortex") related to the property located at 1575 East 18th Avenue, on the southwest corner of South Tomahawk Road and East 18th Avenue (APN #102-07-216B) (the "Property").

Border Health owns a duly licensed Dispensary Registration Certificate (No. 00000108DCVB00423429) and Marijuana Establishment License (No. 00000022ESMC44584355) under the Arizona Department of Health Services' ("AZDHS") medical and adult-use marijuana program (i.e., a dual license). Since March 1, 2022, Border Health has allocated its off-site cultivation rights to the Property.

Cortex is an affiliate of Border Health that recently acquired the Property from MBD Holdings LLC (David House). The operator of the facility under Border Health's license is MariBrea Enterprises, LLC d/b/a Gas Pump Farms ("MariBrea"). MariBrea has been operating the cultivation facility and infusion kitchen ever since P-21-66-CUP was authorized.

I. Description and purpose of this request

This application to amend the CUP is being submitted on behalf of Border Health and stems from a change in ownership of the Property. The Property has been the site of a marijuana cultivation and infusion kitchen since 2014, subject to multiple CUPs authorized by the city.

The current CUP associated with the Property was approved on November 9, 2021. *See* Ex. A, P&Z Commission Resolution No. P-21-61-CUP. The CUP was originally issued to R&J Green Investments LLC but was later transferred to MariBrea Enterprises LLC in May 2022. The city did not require a CUP amendment for that transfer.

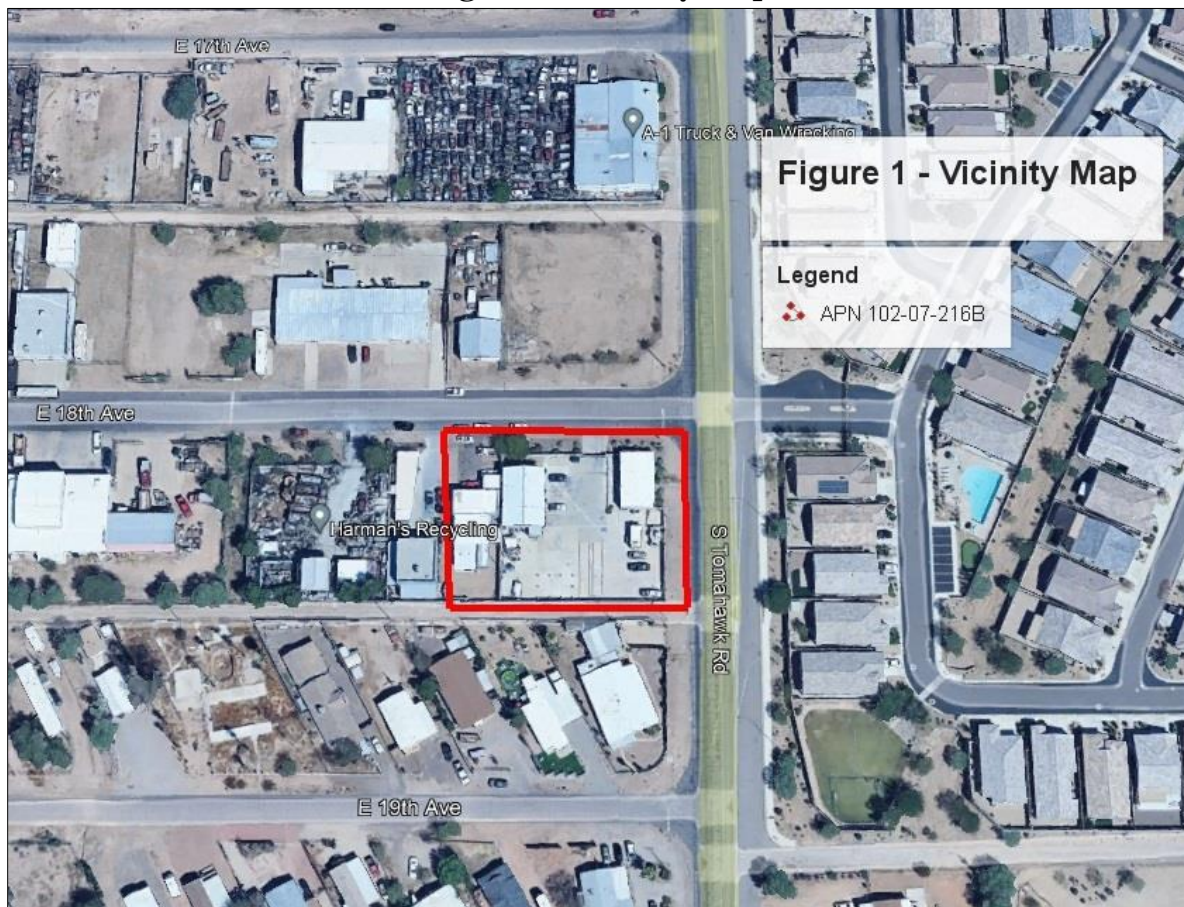
Border Health is requesting to amend the previously approved CUP (in accordance with Condition #16) to continue the use of the marijuana cultivation and infusion kitchen. The subject request is purely administrative as the cultivation and infusion kitchen has been operating since 2014 and specifically under Border Health's license for the past 2 ½ years.

In other words, the facility's proposed operations fall within the same use limits previously authorized by P-21-66-CUP, and Border Health's request is to continue the established use as opposed to introducing new uses or elements. Border Health is only requesting that the CUP be transferred from MariBrea Enterprises LLC such that Border Health legally holds the applicable CUP for the Property. As such, Border Health submits this application for a CUP amendment to continue the use of the existing marijuana cultivation and infusion kitchen under new ownership.¹

II. The Property

The subject site is zoned B-5 (Industrial), is approximately .52 acres, and located at 1575 East 18th Avenue, on the southwest corner of South Tomahawk Road and East 18th Avenue (APN #102-07-216B). *See* Figure 1.

Figure 1 – Vicinity Map



¹ No structure or condition of the Property will change, so no site plan is included.

III. Relationship to surrounding area and uses

The Property is primarily located within an industrial area of the city. There are a mix of low-density residences to the east and south of the Property. *See* Table 1 & Figure 2.

Table 1 – Surrounding Zoning and Uses

Direction	Existing Use	Existing Zoning	Description
North	Industrial	B-5	Vacant lots; various auto parts/scrap businesses
South	Residential	RS-7M	Existing mobile home park
East	Residential	RS-5/PD	Low-density single family homes
West	Industrial	B-5	Automobile manufacturing and recycling

Figure 2 – Surrounding Area Zoning Map



IV. The Property meets the requirements for a CUP

A CUP may be granted upon a finding by the P&Z Commission that the use covered by the permit, the manner of its conduct, and any structure involved will not be detrimental to persons residing or working in the area, to adjacent property, to the neighborhood, or to the public welfare in general.

As discussed above, this application to amend the existing CUP stems from a change in ownership of the Property. No new uses or elements are proposed, meaning the Property already complies with the zoning requirements for conditional use permits.

The P&Z Commission is to consider the following factors when making its determination:

a) Adequacy of roadways, off-street parking, public facilities, and services to accommodate the proposed use.

The Property is located along a road used primarily for access to surrounding industrial properties. There is no dispensary located at the Property, meaning it is not used as a retail facility. The facility is not open to the public; only authorized agents are permitted at the facility. As such, there will be no increased traffic related to patients or recreational customers because no sales or consumption is permitted. Again, the Property has been used as an off-site cultivation and infusion kitchen since 2014 and has not caused any notable adverse impact to adjacent roadways, off-street parking, public facilities, or other applicable services.

b) Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat, or glare.

The facility is currently equipped with a comprehensive odor control system to help mitigate negative impacts related to the cultivation and infusion kitchen operations. The odor control system is regularly maintained to ensure that it is functioning properly. Additionally, all operations occur indoors within the structures located on the Property. Border Health will maintain current operations according to procedures that have been approved by AZDHS.

Again, the Property has been used as an off-site cultivation and infusion kitchen since 2014 and continuing operations will not result in emission of odor, dust, gas, noise, lighting, vibration, smoke, heat, or glare at a level exceeding ambient conditions.

c) Contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values.

This CUP amendment will not contribute in a measurable way to the deterioration of the neighborhood or the lowering of property values because the proposed amendment is purely administrative. Amending the CUP under new ownership will not impact surrounding property values because the same use will continue within the same existing structures that have been successfully operated as a cultivation and infusion kitchen since 2014. In other words, there will be no identifiable change associated with the existing use impacting the surrounding area/neighborhood.

d) Compatibility with surrounding uses and structures.

The CUP amendment is compatible with surrounding uses and structures, which primarily consists of various industrial properties. Amending the CUP under new ownership is compatible with surrounding uses and structures because the same use will continue within the same existing structures that have been successfully operated as a cultivation and infusion kitchen since 2014. Again, all operations associated with the cultivation and infusion kitchen will occur indoors—nothing will be visibly identifiable to the general public. The cultivation and infusion kitchen are permitted with a conditional use permit on an industrially zoned property.

e) Conformance with the General Plan and City policies.

There is no conflict with the 2020 General Plan: the General Plan designates this area for industrial uses, which includes the proposed use as a cultivation and infusion kitchen.

f) Screening and buffering of uses.

The site is currently developed and has a six foot high wall surrounding the entire Property. The entrance is gated, and the site has a robust security system as required by AZDHS. Residentially zoned areas to the east and south are screened from view by existing structures and the wall surrounding the Property.

g) Unique nature of the property, use, and/or development's physical characteristics.

The Property is not located within a major flood zone. It was developed in the early 80's and does not have on-site retention. With respect to operations at the facility, there will be no signage related to the existing use, meaning the facility will be inconspicuous from the

exterior of the building. The use as a cultivation and infusion kitchen will not be visible from the street or to the public.

V. Compliance with Condition #14 (P-21-61-CUP)

Attached as Exhibit B are the articles of incorporation for Cortex Holdings LLC, the new owner of the Property. Per the articles of incorporation, the members of Cortex are: The Solana Trust Dated September 20, 2017, and The Encanto Trust Dated July 26, 2017. The principal contact for Cortex is Scott Vargas (svargas@stickysaguaro.com).

EXHIBIT A

PLANNING AND ZONING COMMISSION
RESOLUTION NO. P-21-66-CUP

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, APPROVING A CONDITIONAL USE PERMIT, CASE NO. P-21-66-CUP, FOR R AND J GREEN INVESTMENTS, LLC, REPRESENTED BY MICHAEL ROTH, TO CONTINUE THE USE OF AN EXISTING MARIJUANA CULTIVATION AND INFUSION KITCHEN FACILITY UNDER NEW OWNERSHIP, ZONED INDUSTRIAL ("B-5").

WHEREAS, a medical marijuana cultivation and infusion kitchen facility was previously approved in 2014 and allowed to operate at 1575 E. 18th Avenue, pursuant to original conditional use permit ("CUP") CUP-2-14, later amended by CUP-2-15 and CUP-4-17, and later renewed by CUP-2-19; and

WHEREAS, the facility addressed as 1575 E. 18th Avenue, also known as Pinal County Assessor Parcel 102-07-216B, is legally described as:

Lots 43, 44, and 45, Palm Springs Unit Six, according to Book 13 of Maps, Page 48, Records of Pinal County, Arizona; and

WHEREAS, a CUP application was submitted on July 16, 2021, to the planning division of the City of Apache Junction development services department, by Michael Roth of R and J Green Investments, LLC, requesting approval of a CUP to continue the use of an existing marijuana cultivation and infusion kitchen under new ownership, as described in the materials submitted with case file no. P-21-66-CUP and as otherwise conditionally approved herein; and

WHEREAS, a planning and zoning commission public hearing was held on October 12, 2021, to fully consider the application and to allow for public input; and

WHEREAS, at its public hearing on October 12, 2021, the planning and zoning commission evaluated the CUP request against the criteria for the granting of a CUP as contained in Apache Junction City Code, Volume II, Land Development Code, Chapter 1: Zoning Ordinance, Article 1-16: Administration, Section 1-16-12,

Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-16-12(D)(3), and found that:

- a) The site has adequate roadways, off-street parking, public facilities and services to accommodate the proposed use, and future expansion will coincide with further improvements as required herein.
- b) Negative impacts are not expected from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare.
- c) The use will not contribute to the deterioration of the neighborhood or have a negative impact on neighborhood property values.
- d) The use is compatible with surrounding uses and structures.
- e) The use conforms to the general plan and City policies.
- f) The site provides for adequate screening and buffering of uses.
- g) There is not a unique nature to the property, use and/or development's physical characteristics.

NOW THEREFORE BE IT RESOLVED, that on October 12, 2021, the Apache Junction planning and zoning commission, after: 1) receiving satisfactory responses to the questions raised at the public hearing; 2) hearing, considering and discussing all of the facts and comments presented by staff and applicant; 3) reviewing the zoning and land use criteria relevant to the granting of a CUP, as contained in the Apache Junction City Code, Volume II, Land Development Code, Chapter 1: Zoning Ordinance, Article 1-5: Zoning Bulk and Use Regulations, Section 1-5-3, Table 5-3: Non-residential Use Regulations, and Article 1-16: Administration, Section 1-16-12, Conditional Use Permits, Administrative Use Permits and Building Permits, Subsection 1-

16-12(D)(3), voted to approve case P-21-66-CUP by a vote of 6-1, subject to the following conditions of approval:

1) The owners/operators of the marijuana cultivation and infusion kitchen facility shall obtain and/or keep in good standing all necessary approvals from the Arizona Department of Health Services ("ADHS") and the Pinal County Health Department for the marijuana cultivation and infusion kitchen operations.

2) The owners/operators of the facility shall obtain and keep a city business license at all times during the operation of the marijuana cultivation and infusion kitchen operations.

3) Upon final approval from the ADHS to operate the facility, a copy of said final approval letter shall be provided to the planning division and the Apache Junction Police Department ("AJPD") for the purpose of record keeping.

4) All marijuana agents associated with the facility shall register with AJPD for the purpose of background checks and record keeping (including but not limited to, owners, employees, directors, board members, etc.).

5) The facility shall not offer or allow the following: outdoor seating/break areas for anyone other than employees and agents of the facility; on-site consumption of marijuana; loitering in or around the premises; the sale of any products from the facility.

6) Signage on the building shall conform to the city's sign code for industrial zoned properties. The marijuana leaf symbol shall not appear on any signs visible from outside the facility. The existing artwork on the building may remain.

7) The existing buildings housing the facility shall not be allowed any expansions, unless a new CUP or CUP amendment application is processed and approved by the city first.

8) The owners and operators of the facility shall keep and neatly maintain all landscape and screening improvements along the

property's 18th Avenue and Tomahawk Road frontages, in accordance with the city's landscape and screening requirements.

9) All screening, fencing and security improvements on the property shall be kept in good condition and repair at all times.

10) The owners and operators shall continue to operate the facility in accordance with the submitted drawings and narrative documents submitted with P-21-66-CUP, or else the CUP shall be subject to review and possible revocation by the planning and zoning commission.

11) The operators of the facility shall cooperate with local police officials (AJPd) insofar as personnel updates, providing copies of agent registration cards, allowing and accommodating unannounced inspections by law enforcement officials at any time the facility is occupied and/or operating, emergency contact information, alarm permit and other items for the reasonable, transparent and safe operation of the facility.

12) The owners and operators of the facility shall provide for parking accommodations (number, design and layout of parking spaces) as depicted in the site plan submitted as part of P-21-66-CUP application, including one (1) ADA compliant space.

13) The owners/operators of the facility shall work with city staff to continue to provide for high resolution security cameras and other security features and devices at the facility.

14) R & J Green Investment LLC shall provide to the city's planning division a copy of their articles of incorporation, including the names of the directors and officers, managers, principal contacts, responsible parties, etc.

15) Should management and/or ownership of the marijuana cultivation and infusion facility change at any time after approval of the CUP, the new owners or operators shall operate the site and facility subject to the exact same conditions of approval, including the provision of all new ownership, operator and

marijuana agent information (and updates) to the city's police department.

16) If changes in the members, directors and officers occur, R & J Green Investments, LLC shall keep the planning division informed of said changes. If at any time during the operation of the cultivation and infusion facility, the managing members or a majority of the members, directors or officers changes, a CUP amendment shall be required.

17) Any proposed future expansions or additional buildings at the site, beyond the proposed storage building included in the plans submitted for P-21-66-CUP, will require approval of a CUP amendment through the city's planning and zoning commission first. This includes the possible future use of "mobile minis".

18) The operators of the facility shall always check with the city's building or planning departments for possible building permit requirements, prior to performing or conducting any new construction, electrical, plumbing, structural or other work which may require permits. Permits may also be required for the installation of security, odor control equipment and dark sky compliant outdoor lighting.

19) The planning and zoning commission shall reserve the right to reconsider or overturn the CUP approval, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP approval or if the use is demonstrated to be a nuisance or neighborhood hazard.

20) At such time as the "proposed structure" shown in the submitted plan is to be constructed, half-street improvements on the adjacent streets shall be provided per city engineering standards and requirements, as follows:

- Half-street improvements on Tomahawk Road consisting of a minimum 24' driveway at the project entrance, solid drive surface from the back of the driveway to the gate, curb return

at the intersection, detached concrete sidewalk, and streetlights.

- Half-street improvements on 18th avenue consisting of a minimum 30' driveway at the project entrance, concrete sidewalk, and streetlights.

PASSED AND ADOPTED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, THIS 12TH DAY OF OCTOBER, 2021.

SIGNED AND ATTESTED TO THIS 9th DAY OF November 2021.


PETER HECK, Chairperson
Planning and Zoning Commission

ATTEST:


LARRY KIRCH
Development Services Director

APPROVED AS TO FORM:


 10-22-21
RICHARD JOEL STERN
City Attorney

EXHIBIT B

ARTICLES OF AMENDMENT TO ARTICLES OF ORGANIZATION

LIMITED LIABILITY COMPANY

ENTITY INFORMATION

ENTITY NAME: CORTEX HOLDINGS, LLC
ENTITY ID: L20989609
ENTITY TYPE: Domestic LLC
PERIOD OF DURATION: Perpetual
PROFESSIONAL SERVICES:
CHARACTER OF BUSINESS: Other - MMJ
MANAGEMENT STRUCTURE: Member-Managed

FORMER ENTITY NAME No name change

STATUTORY AGENT INFORMATION

STATUTORY AGENT NAME: LAURA BIANCHI
PHYSICAL ADDRESS: 6730 N Scottsdale Rd, Suite 100, SCOTTSDALE, AZ 85253
MAILING ADDRESS: 6730 N Scottsdale Rd, Suite 100, SCOTTSDALE, AZ 85253

KNOWN PLACE OF BUSINESS

410 North Roosevelt Ave, CHANDLER, AZ 85226

PRINCIPALS

Member: The Encanto Trust Dated July 26, 2017 - 410 North Roosevelt Ave., CHANDLER, AZ, 85226, USA - -
Date of Taking Office:

Member: The Solana Trust Dated September 20, 2017 - 410 North Roosevelt Ave., CHANDLER, AZ, 85226, USA
- - Date of Taking Office: 06/08/2016

SIGNATURE

Authorized Agent: Laura Bianchi - 07/02/2024

Remove Scott Vargas as Member
Remove Todd Vargas as Member

Add The Solana Trust Dated September 20, 2017 as Member
410 N. Roosevelt Ave.
Chandler, AZ 85226

Add The Encanto Trust Dated July 26, 2017 as Member
410 N. Roosevelt Ave.
Chandler, AZ 85226

Update Principal Address to:
410 N. Roosevelt Ave.
Chandler, AZ 85226