



City of Apache Junction

Development Services Department



PLANNING AND ZONING COMMISSION PUBLIC HEARING STAFF REPORT

DATE: December 10, 2019

CASE NUMBER: CUP-2-19

REQUEST: A Conditional Use Permit (CUP) request to allow the operation of a non-profit medical marijuana cultivation and infusion kitchen facility by a new ownership group.

PROPERTY OWNER: MBD Holdings LLC c/o David House

APPLICANTS: Nabis Holdings Inc. & Perpetual Healthcare Inc., represented by Lindsay Schube of Gammage & Burnham PLC

LOCATION: The subject site is located at 1575 E. 18th Avenue, on the southwest corner of S. Tomahawk Road and E. 18th Avenue (Assessor parcel #102-07-215 & 216A).

**GENERAL PLAN/
ZONING DESIGNATION:** Designated "Medium Density Residential"; zoned B-5 (Industrial).

SURROUNDING USES:

NORTH: Vacant industrial lots (zoned B-5);

SOUTH: Palm Springs Mobile Homes Subdivision (zoned RS-7M);

EAST: Bel Agave Subdivision (zoned RS-5/PD);

WEST: Industrial business lots (zoned B-5).

BACKGROUND

The Palm Springs Unit 6 Industrial Subdivision, in which the subject site is located, was platted in 1966, 12 years before the city's incorporation. The existing buildings currently on

the property were constructed in 1981 and 1985, according to Assessor records. The west building, identified as Building 1 on the attached site plan and the shade structure on the south side of the lot were constructed first; and the east building, identified as Building 2, was the later addition. As of June 2014, the new zoning on the property is B-5 (Industrial), which was formerly the CI-1 zone (Light Industry and Warehouse Zone). The old CI-1 zoning was in place when the City incorporated.

Since 2014, this site has been used as a non-profit medical marijuana cultivation and infusion kitchen facility, allowed pursuant to the city's medical marijuana regulations and conditional use permit processes, as follows:

- May 2014: P&Z Commission approved case CUP-2-14, allowing said facility type to operate out of the existing buildings. Nature's Wonder was to be the operator and Capital Care Connections LLC was the management company. Capital Care pulled the permits for remodeling work. Nature's Wonder and Capital Care soon went their separate ways. Perpetual Healthcare stepped in as the new facility operator. Perpetual personnel installed "mobile-minis" on the property without the city's knowledge or permits. Once discovered and considered an expansion, a CUP amendment was required for the temporary mobile units and to note the change of operator.
- December 2015: P&Z Commission approved case CUP-2-15, the first amendment to CUP-2-14, allowing Perpetual Healthcare to use cargo containers and mobile minis for things such as temporary storage, work spaces, office, walk-in refrigerator, etc. The use of the temporary units had an expiration date of 24 months from the effective date of the resolution (December 15, 2015). Conditions of approval also required the operators to apply for a new CUP amendment for permanent facilities within 18 months and that any expansion or addition of buildings would also trigger sewer system connection.
- November 2017: Commission approved case CUP-4-17, the second amendment to CUP-2-14, allowing Perpetual to move ahead with the construction of a permanent building to replace the uses temporarily housed in the mobile minis. The new building was to be applied for within 6 months of CUP-4-17 approval and completed by November 21, 2019. The two lots which comprise the site were also supposed to be combined into one and the property was to hook up to sewer (see P&Z Resolution No. CUP-4-17). The

operators failed to comply with the Commission's conditions of approval. In early 2019, both the property owner and Perpetual's counsel informed staff that for numerous reasons, the facility was closing.

- July 2019: On July 9, 2019, the Commission voted to revoke CUP-4-17. All operations were required to end by November 21, 2019. Operations have ended and the mobile minis have been removed from the site.

The owner/landlord of the subject site was and continues to be MBD Holdings LLC, manager, David House. The entity known as Perpetual Healthcare Inc. is still the med-mar infusion facility license holder for the AJ CHAA (Community Health Analysis Area).

NEW CUP REQUEST

As of October 2019, Nabis Holdings Inc., a Canadian-based investment company gained 100% control of Perpetual Healthcare. It is Nabis that is submitting this new CUP application on behalf of Perpetual (see CUP narrative). Nabis is proposing to essentially run a smaller operation. They propose to operate entirely out of the two existing buildings; will concentrate more on infusion; will have a significantly smaller cultivation component to their facility; and they are agreeable to complying with the city's lot combo and sewer hookup conditions, as well as the other operating conditions which the city has requested of former facility operators and management entities. The long existing shade structure will remain and they are requesting to keep the walk-in refrigerator unit.

If this new CUP is approved, then the applicants can proceed with any new necessary permits and inspections for their proposed operation. Staff will also recommend time frames for sewer hookup and lot combo. The facility will also be subject to inspections and approvals from the Arizona Department of Health Services, Medical Marijuana Division and our local police personnel for unannounced spot inspections.

The applicant's narrative offers their analysis of the city's criteria for a CUP request. Staff also offers our analysis for the Commission's consideration below.

PLANNING STAFF ANALYSIS AND FINDINGS

Case CUP-2-14 originally approved the medical marijuana cultivation and infusion kitchen facility at the subject site. CUP-2-15 and CUP-4-17 essentially built upon and improved upon the conditions of the original approval as needed and as we learned from this site and the other med-mar sites in the city over time (see previous P&Z Resolution No. CUP-4-17 attached). This is a new CUP request for a smaller scale facility, but once again, we can build upon and hopefully improve upon what we have and continue to learn.

The city's zoning ordinance, Section 1-16-12(D)(3) is detailed below. It is the section that lists the criteria or findings for conditional use permits in general. The CUP criteria which the commission should consider in evaluating any CUP request and staff's commentary on said criteria (in grey tone) relative to this request, for the commission's discussion and consideration are as follows:

Findings. A CUP may be granted upon a finding by the 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. The burden of proof for satisfying the aforementioned requirements shall rest with the applicant.

In arriving at the above determination, the commission shall consider but not be limited to the following factors:

- a) Adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use. (The site is located along a road used primarily for access to industrial properties. The site has all necessary services and will be connected to sewer. Additional public access and improvements are not required. The site is developed, self-contained and the use will not affect roadways, parking, facilities or services).
- b) Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat, or glare. (The facility will once again use filtration devices to keep odors from escaping. When odor complaints were made in the past [mostly during the first year], staff worked with the operators to mitigate the complaints. There have

not been any more recent odor complaints. Even though the applicants state that the cultivation component of the facility will be significantly less, Staff will request that odor control devices be installed to further mitigate possible odor issues).

- c) Contribution to the deterioration of the neighborhood or the negative impact of neighborhood property values. (Staff expects no negative impact to the neighborhood with the re-establishment of this use under a new CUP).
- d) Compatibility with surrounding uses and structures. (Uses to the north and west are zoned industrial and should not be negatively affected. Properties to the south and east are single-family subdivisions. The industrial area has existed adjacent to residential uses since prior to city incorporation. The cultivation and infusion facility is permitted with a conditional use permit on an industrially zoned property).
- e) Conformance with the General Plan and City policies. (The General Plan designates the area as Medium Density Residential, but the industrial area has existed prior to city incorporation and the general plan. The use appears to comply with the criteria for a CUP as well as the criteria for a medical marijuana cultivation and infusion facility).
- f) Screening and buffering of uses. (The current site is developed and has a six-foot tall masonry wall surrounding the property with a gated entrance and security).
- g) Unique nature of the property, use and/or development's physical characteristics. (The property is not in a major flood zone, was developed in the early 80's and does not have on-site retention).

The city's Zoning Ordinance, Sections 1-6-12(E) and (F), are the sections that allow for non-profit medical marijuana uses in the City, subject to approval of a Conditional Use Permit (CUP). There are a number of spacing and operational requirements which the Commission should consider when evaluating this type of request. Those criteria and staff's commentary on said criteria (in grey tone), for the Commission's discussion and consideration, are as follows:

- (E) Applications. A CUP application for medical marijuana dispensaries, cultivation facilities or infusion facilities shall include all the information required on the CUP application form and the following supplemental information:
- (1) Signature and consent on the application form by the property owner of record that he or she is aware the property will be used for medical marijuana dispensing, cultivating or infusion. *(Provided - see CUP application.)*
 - (2) A copy of the preliminary approval from the State Department of Health Services ("DHS"), such as a registration certificate, for the nonprofit medical marijuana dispensary, nonprofit medical marijuana dispensary off-site cultivation facility or stand-alone nonprofit medical marijuana infusion facility, and a written assurance that all nonprofit medical marijuana dispensary agents associated with the approved facility shall register with the local Police Department upon final approval to operate from DHS, as well as a copy of said final approval document. *(Perpetual is the current licensee for the cultivation facility. They need a new CUP from the city.)*
 - (3) Application and all applicable fees paid as required by Apache Junction City Code, Volume I, Chapter 8, Business, and the Apache Junction City Tax Code as amended. *(Perpetual has and must maintain a City business license for the facility.)*
 - (4) A detailed site plan and floor plan for the facility prepared in accordance with Section 1-16-9, and narrative explaining the operation of the facility and hours of operation. *(See applicant's narrative and site plan exhibits. As in the past, most employees will be on site normal business hours. Extensive detailed plans were submitted at the time of the original remodeling of the facility.)*
- (F) Conditions of Approval. The conditions of approval which may be considered by the Planning and Zoning Commission in evaluating these requests include the following:

(1) Required Spacing Requirements:

- a) A minimum of 1,320 feet between another dispensary, cultivation facility or infusion facility, as measured from nearest building wall to nearest building wall. *(Complies - the Nature's Wonder dispensary is over one mile to the northwest of the site.)*
- b) A minimum of 750 feet between a dispensary, cultivation facility or infusion facility and any public or private education institution, library, public park, commercial-zoned day care facility, free-standing church, or drug and/or alcohol rehabilitation center, as measured from nearest building wall of the business to the nearest building wall of the protected use. *(To the best of staff's knowledge, there are no protected uses within 750' of the site. The nearest church is about 3200 feet to the east of the site, and the nearest school is over 1 mile to the northwest of the site.)*

(2) Operating Requirements:

- a) Drive-through pickup windows shall not be allowed. Delivery service shall be allowed as per state statute. *(No pick-up windows possible, nor allowed at this site; no delivery service to patients allowed, only to the dispensaries which the facility serves.)*
- b) Outdoor seating areas at dispensaries, cultivation facilities or infusion facilities shall not be allowed. *(None proposed, nor allowed.)*
- c) A medical marijuana facility shall submit a security plan containing the following information:
 - i) Proof that any cultivation and storage of medical marijuana will take place in an "enclosed, locked facility" equipped with locks or other security devices that permit access only by persons authorized to enter pursuant to state and local law. *(Facility was improved with these features*

at the time of remodeling; staff will continue to work with operators on security issues with regard to new remodeling work which may need to be done.)

- ii) A floor plan that details the security measures required by state law, including an on-site alarm system, video surveillance devices and a single secure entrance. (Same as "i" above.)
- iii) Additional protections, if any, against medical marijuana diversion and theft. (Same as "i" above.)
- iv) Provide and update as needed a current list of all persons who are authorized to access the dispensary, off-site cultivation site or infusion facility. (This item is enforced and verified through periodic and unannounced police inspections.)
- d) On-site consumption of medical marijuana at a dispensary, cultivation facility or infusion facility shall not be allowed. (Not proposed, not allowed.)
- e) Dispensaries selling marijuana related products such as pipes, water pipes, rolling paper, screens, vaporizers, mills, concealing devices, etc., shall be restricted to selling only to patients displaying the required Arizona Department of Health Services medical marijuana card and to be used only in conjunction with a physician's certification or recommendation. Cookbooks and educational materials are excepted from this provision. (None proposed, nor allowed. This is not a dispensary.)
- f) The size of facility in terms of square footage, building height or other factors shall be consistent with the character of existing or planned surrounding development. (Buildings are pre-existing; no expansions proposed.)

- g) Signage that will be visible from the exterior of the facility may be approved by the city if all sign code regulations have been met. The use of the marijuana leaf symbol shall not be allowed on any exterior signage. *(No signage is proposed to identify the facility as such. Facility will keep the existing signage on the building which depicts a former contracting business.)*
- (3) Other Conditions. The planning and zoning commission may deem it necessary to apply other conditions to conserve and promote the public health, safety, convenience and general welfare, including:
 - a) Compliance with all City-adopted zoning, landscaping, engineering, building, design guidelines, overlay district and/or planned development district requirements. *(Permits may be required for additional interior and/or exterior electrical and remodeling work; landscaping, adequate parking and adequate access exist.)*
 - b) The commission shall reserve the right to revoke a CUP for non-compliance with any condition prescribed as part of the permit approval or if the use is demonstrated to be a nuisance or hazard to the neighborhood or community. *(This provision was enforced with the last CUP for the site. Can be enforced again for non-compliance.)*
 - c) Hours of operation will be addressed through the CUP process. *(Hours of operation do not seem to be an issue at this facility.)*

PUBLIC NOTIFICATION

The CUP case was advertised for the commission's public hearing and letters were mailed to all property owners within 300 feet of the site. Staff has not received any phone calls or public comments regarding the request.

PLANNING DIVISION RECOMMENDATION

The use of the site as a medical marijuana cultivation and infusion facility was previously approved through CUP-4-17. The

CUP was revoked because previous management and operation entities failed to comply with the commission's conditions—mainly completion of permanent building, lot combination and hookup to sewer. Reasons for the failure may have included long-standing internal disputes and disagreements between the various owners, as well as financial issues. The facility operators were otherwise always cooperative with city planning, building and police personnel, especially when it came to correcting issues and allowing access.

The facility closed very recently, but its presence in the neighborhood goes back 5 years. Time appears to have eased concerns and dispelled misconceptions about the use type. Staff does not believe that approval of a new CUP will have negative effects on the neighborhood, and we believe that the facility's hookup to sewer will not only improve the property but also allow for ease of development of other properties in the industrial subdivision. The commission will still have safeguards in case the new ownership group has their own compliance or performance issues. Therefore, Planning Staff recommends approval of the conditional use permit amendment request subject to the conditions listed under the recommended motion:

RECOMMENDED MOTION

I move that the Planning and Zoning Commission (APPROVE/DENY) case CUP-2-19, a request by Nabis Holdings Inc., on behalf of Perpetual Healthcare Inc., represented by Lindsay Schube of Gammage and Burnham PLC, requesting a Conditional Use Permit to newly operate a nonprofit medical marijuana cultivation and infusion kitchen facility at 1575 E. 18th Avenue, located on the southwest corner of S. Tomahawk Road and E. 18th Avenue, zoned Industrial (B-5), subject to the following conditions of approval:

- 1) The owners/operators of the non-profit medical 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 medical 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 medical 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 non-profit medical marijuana agents associated with the facility shall register with the AJPD for the purpose of background checks and record keeping (including but not limited to, owners, employees, directors, board members, etc.).
- 5) No other non-profit medical marijuana cultivation, infusion or dispensary facilities shall be established in the Apache Junction city limits by Nabis Holdings Inc., Perpetual Healthcare Inc., or any other entity, without first applying through the city's CUP process.
- 6) 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 medical marijuana; loitering in or around the premises; the sale of any products from the facility.
- 7) 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.
- 8) 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.
- 9) 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.

- 10) All screening, fencing and security improvements on the property shall be kept in good condition and repair at all times.
- 11) The owners and operators shall continue to operate the facility in accordance with the submitted drawings and narrative documents submitted with CUP-2-19, or else the CUP shall be subject to review and possible revocation by the planning and zoning commission.
- 12) The operators of the facility shall cooperate with local police officials 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.
- 13) 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 the CUP-2-19 application, including one (1) ADA compliant space.
- 14) 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.
- 15) Nabis Holdings and Perpetual Healthcare Inc. 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.
- 16) Should management and/or ownership of the medical 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 medical marijuana agent information (and updates) to the city's police department.

- 17) If changes in the members, directors and officers occur, Nabis and Perpetual Healthcare 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.
- 18) Within 90 days of approval of the CUP, Nabis and/or Perpetual Healthcare and the property owner, shall apply for a lot combination of parcels 102-07-215 and 102-07-216A, through the city's development services department.
- 19) Within 180 days of the effective date of approval of Resolution No. CUP-2-19, the facility operators and property owner shall apply to the Superstition Mountain Community Facilities District #1 ("Sewer District") for sewer hookup to the property. Said sewer hookup improvements must be completed within one year of the effective date of the resolution.
- 20) Any proposed future expansions or additional buildings at the site will require approval of a CUP amendment through the city's P&Z Commission first. This includes the possible future use of cargo containers or "mobile minis".
- 21) 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.
- 22) 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.


Prepared by Rudy Esquivias
Planning Manager

Attachments:

- Exhibit #1 - CUP-2-19 Application
- Exhibit #2 - CUP-2-19 Zoning and Vicinity Map
- Exhibit #3 - CUP-2-19 Neighborhood Notice Aerial Map
- Exhibit #4 - Existing Site Plan
- Exhibit #5 - CUP Narrative
- Exhibit #6 - Previous P&Z Resolution No. CUP-4-17



City of Apache Junction
Development Services Department
Conditional Use Permit Application



Exhibit A: Planning and Zoning Application Form

Type of application:

- ☐ Residential use/extension/amendment
☒ Non-residential use/extension/amendment
☐ Comprehensive Sign Package
☐ Landscape Ordinance Appeal

SITE INFORMATION

SITE ADDRESS/LOCATION 1575 East 18th Avenue ASSESSORS PARCEL NO 102-07-215 and - 216A

GROSS AREA: +/- 0.72 ac NET AREA +/- 0.52 ac EXISTING ZONING B-5

LEGAL DESCRIPTION OF PROPERTY: (found on County Tax Bill Notices or Warranty Deed) See attached.

BRIEF DESCRIPTION OF THE PROPOSED PROJECT/USE FOR CONDITIONAL USE PERMIT REQUEST:

Conditional Use Permit for a Medical Marijuana Cultivation and Infusion facility

APPLICANT INFORMATION

Property Owner(s) MBD Holdings, L.L.C.

Address 325 South Mountain View Road, Apache Junction, Arizona 85119

Phone Number (480) 330-8858 Fax Number _____ Email pavehouse@hotmail.com

Applicant Contact Person/Project Manager Gammage & Burnham, P.L.C. / Lindsay C. Schube

Address 2 North Central Avenue, 15th Floor

Phone Number (602) 256-4471 Fax Number _____ Email lschube@gblaw.com

For Dept Use only

PLN Number PLN 2019-00056

Approved By: _____

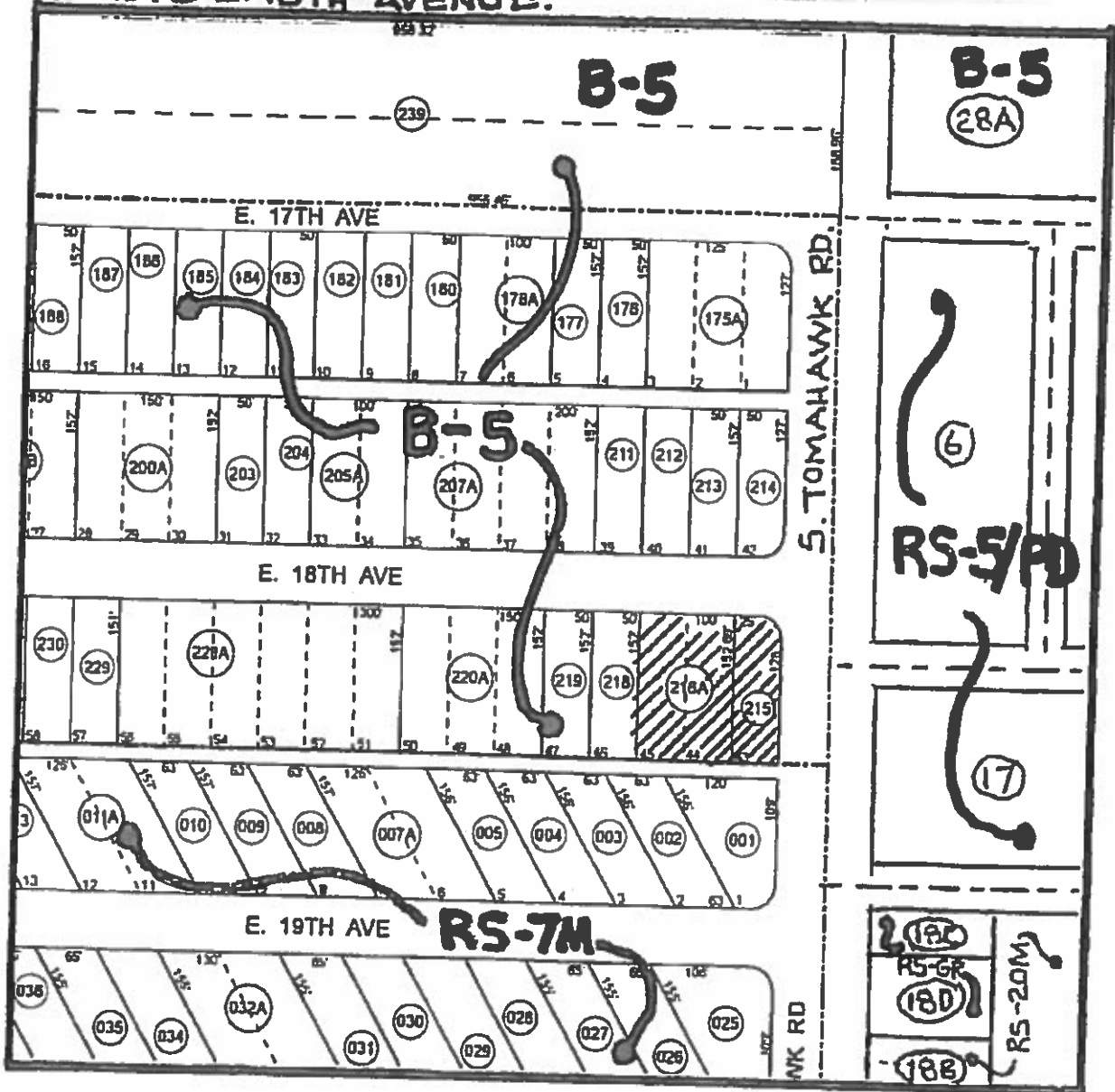
Case Number CLP-2019

Date Submitted: _____

Date Approved: _____

CUP-2-19

A REQUEST BY MBD HOLDINGS LLC, REPRESENTED BY GAMMAGE + BURNHAM PLC, FOR A CONDITIONAL USE PERMIT TO OPERATE A MEDICAL MARIJUANA FACILITY AT 1375 E. 18TH AVENUE.



SUBJECT SITE

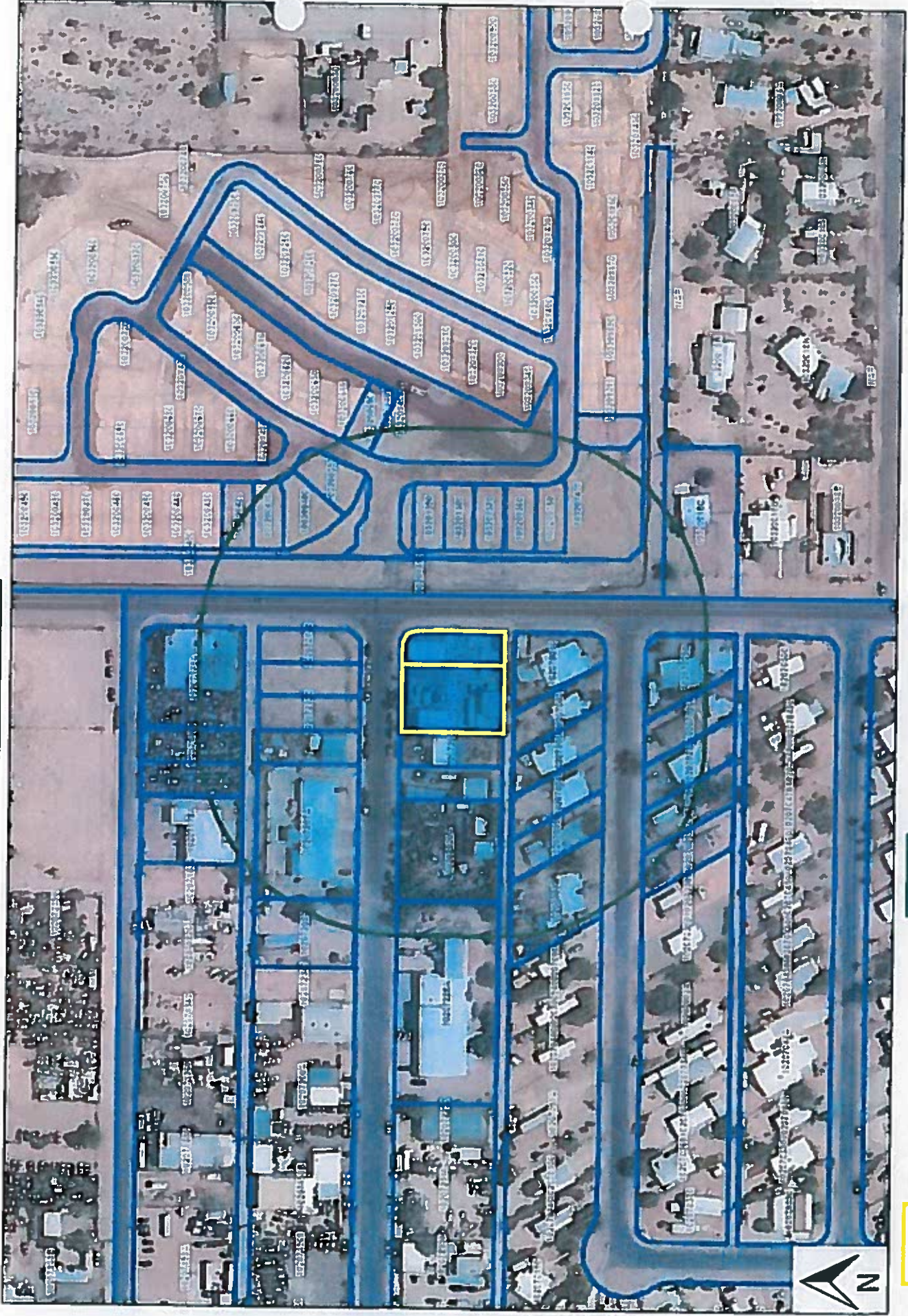
ZONING DISTRICTS:

INDUSTRIAL: B-5

RESIDENTIAL: RS-GR, RS-5/PD, RS-20M

ZONING + VICINITY MAP

Notification Map – Property Owners within 300-Foot



[illegible]

CONDITIONAL USE PERMIT

1575 EAST 18th AVENUE

PINAL COUNTY ASSESSOR PARCEL NUMBERS 102-07-215 and -216A

NARRATIVE

November 14, 2019

INTRODUCTION

Nabis Holdings Inc. ("Nabis") is submitting this Conditional Use Permit application ("Application") on behalf of Perpetual Healthcare Inc. ("Perpetual Healthcare") to allow for a medical marijuana cultivation and infusion facility (the "Proposed Facility") at 1575 East 18th Avenue ("Property").

On October 25, 2019, Nabis, a Canadian-based investment company, gained 100% control of Perpetual Healthcare. Perpetual Healthcare, the entity that was awarded a medical marijuana dispensary certificate by the Arizona Department of Health Services ("AZDHS"), is the operator of an existing licensed, non-profit medical marijuana cultivation and infusion facility on the Property. As the license holder, Perpetual Healthcare would remain the operator of the Proposed Facility. However, management of Perpetual Healthcare is now in entirely new hands by a company called Nabis. The former managers of Perpetual Healthcare are no longer involved or have any interest in the license.

Prior to Nabis's control of Perpetual Healthcare, on July 9, 2019, the Apache Junction Planning and Zoning Commission approved a revocation of the Conditional Use Permit (CUP), which allowed for medical marijuana cultivation and infusion on the Property. Specifically, the former managers of Perpetual Healthcare failed to comply with certain time-sensitive conditions attached to the approval of the CUP (see below for a more detailed explanation).

The revocation of the CUP will become effective on November 21, 2019, at which time all operations of the existing facility will have ceased. This Application is being submitted to allow Nabis, as the new manager of Perpetual Healthcare, to operate a new medical marijuana cultivation and infusion facility on the Property. Nabis will use its experience in managing and operating medical marijuana facilities in Arizona and throughout the United States to ensure safe and successful operations of the Proposed Facility in full compliance with all applicable requirements and laws of the State of Arizona, AZDHS and the City of Apache Junction.

HISTORY

By way of background, in May 2014, the Planning and Zoning Commission originally approved case CUP-2-14 to allow for a medical marijuana cultivation and infusion facility within the existing buildings on the Property. Following this original approval, the Planning and Zoning Commission approved two separate amendments to the approved CUP under CUP-2-15 and CUP-4-17. The most recent amendment, CUP-4-17, allowed for an expansion of the facility to a proposed, new permanent building on the Property, subject to a number of conditions (many of which were time sensitive).

On July 9, 2019, the Planning and Zoning Commission approved a revocation of the originally approved CUP as well as its subsequent amendments for failure of the then-managers of Perpetual Healthcare to comply with certain time-sensitive conditions of approval for CUP-4-17, including:

1. The former managers of Perpetual Healthcare did not obtain a certificate of occupancy for the proposed, new permanent building by November 21, 2019 (Condition 19 of CUP-4-17)
2. The former managers of Perpetual Healthcare did not process a lot combination for the Property's two lots by November 21, 2019 (Condition 20 of CUP-4-17); and
3. The former managers of Perpetual Healthcare did not connect the Property to sewer (Condition 23 of CUP-4-17).

Importantly, the Planning and Zoning Commission did not revoke the CUP due to any health, safety or welfare concerns as it relates to the operations of the existing facility. Rather, the Planning and Zoning Commission revoked the CUP because the former managers of Perpetual Healthcare did not construct the new building, did not process a lot combination and did not connect the Property to sewer, as was required by the approval conditions.

Following the revocation of the CUP in July, Nabis became the new manager of Perpetual Healthcare last month on October 25, 2019. If this Application is approved, Nabis will comply with all approval conditions, including obtaining all required permits, connecting the Property to sewer and processing a lot combination.

NABIS'S BACKGROUND

Nabis is a Canadian-based investment company that focuses on investing in high-quality assets across multiple industries, including the cannabis sector. Nabis's management team includes business professionals with 20+ years of business experience as well as

industry leaders in the cannabis space, who have experience successfully operating cannabis facilities in multiple Countries and States throughout the U.S, including in Arizona.

Nabis intends to use its experience in managing cannabis facilities throughout the U.S. and, in particular, its understanding of AZDHS regulations that govern the medical marijuana industry in Arizona, to ensure safe and successful operations of the Proposed Facility on the Property in compliance with all regulations and laws.

PROPERTY

The Property is zoned B-5 (Industrial) and located within a primarily industrial area of the City of Apache Junction ("City"). The surrounding area is primarily industrial with a mix of low-density residences. Specifically, the properties to the north across 18th Avenue are zoned B-5 (Industrial) and are either vacant or consist of a variety of automobile repair shops; the properties to the east across Tomahawk Road are zoned RS-7 PD and consist of low density single-family homes advertised for active adults; the properties to the south are zoned RS-7M and consist of an existing mobile home park; and the properties to the west are zoned B-5 (Industrial) and include Highways Custom Canvas (automobile manufacturing) and Harman's Recycling (automobile recycling center).

REQUEST

This Application requests approval of a new Conditional Use Permit to allow for a medical marijuana cultivation and infusion facility within the Property's two existing permanent buildings.

In accordance with Section 1-16-12(D)(3) of the Apache Junction Zoning Ordinance, a CUP may be granted upon a finding by the Planning and Zoning 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." The Planning and Zoning Commission is to consider the following factors in arriving at this determination:

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

Response: The adjacent roadways, off-street parking, public facilities and services are adequate to accommodate this Application. The approval of this Application will not detrimentally impact or require improvements to adjacent roadways, off-street parking, public facilities and services. The Property is zoned B-5, which permits industrial uses by-right, such as

manufacturing, distribution, warehousing, and certain retail and service uses. These uses, again which are permitted by-right on the Property, are more intense than the Proposed Facility.

As it relates to vehicular traffic, the Proposed Facility will generate significantly less vehicle trips than many of the surrounding uses and the other more-intense industrial uses that are permitted by right under the Property's B-5 zoning. Unlike medical marijuana dispensaries, medical marijuana cultivation and infusion facilities are not open to the general public (i.e., only employees and agents are permitted in the building), which means the Proposed Facility will generate no "passerby traffic" (like other uses that are open to the public and permitted on the Property by-right). The limited vehicular traffic that is generated by the Proposed Facility will be accommodated by the Property's convenient access to Tomahawk Road, a major north-south thoroughfare.

It is also important to note that the Proposed Facility will function similarly to the Property's existing medical marijuana cultivation and infusion facility, which, since beginning operations in 2014, has not caused any adverse impacts to adjacent roadways, off-street parking, public facilities or services.

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

Response: This Application will not cause a significant increase in the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare. All operations associated with the Proposed Facility will be conducted entirely indoors within the Property's two existing buildings. In addition, the Proposed Facility will include only limited growing/cultivation of medical marijuana in order to comply with AZDHS requirements. The primary operations of the Proposed Facility will be medical marijuana manufacturing/infusion, which does not involve the growing or trimming of cannabis — the activities most associated with producing odor. Moreover, Nabix will install and maintain an odor control system capable of accommodating any emission of odor that is caused by the Proposed Facility.

The Proposed Facility will therefore not cause a significant increase in the emission of odor, dust, gas, noise, lighting, vibration, smoke heat or glare at a level exceeding ambient conditions commonly associated with industrial

areas—particularly the high ambient conditions of the surrounding area, which includes many large-scale, intense industrial uses.

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

Response: This Application will not contribute in a measurable way to the deterioration of the neighborhood or the lowering of property values. The existing facility on the Property has not caused any adverse impacts on properties in the surrounding area. The Proposed Facility, which will function similarly to the existing facility, will also be compatible with the surrounding area, which includes numerous existing intense industrial uses, including manufacturing, outdoor storage, auto repair and other uses.

Importantly, because the Proposed Facility is not open to the public, there will be no signage on the exterior of the building relating to the Proposed Facility. As such, the Proposed Facility will be inconspicuous from the exterior of the Property's existing buildings and will not be visibly identifiable from the street or otherwise to the general public.

In addition, Nabis will ensure the safe operation of the Proposed Facility by complying with all applicable security and operational requirements set forth by the State of Arizona, AZDHS and the City. The Proposed Facility will therefore not contribute to the deterioration of the neighborhood or the lowering of property values.

(d) *Compatibility with surrounding uses and structures.*

Response: This Application is compatible with the surrounding uses and structures. The Property is located within an area that includes many properties that are zoned B-5, which allows for a variety of intense industrial uses, including manufacturing, warehousing and storage. In fact, all immediately surrounding properties to the north, northwest and west are zoned B-5, many of which consist of existing industrial uses. The Proposed Facility is similar in intensity to, if not less intense than, these surrounding industrial uses. All operations associated with the Proposed Facility will be conducted indoors. There will also be no signage relating to the Proposed Facility—meaning, the Proposed Facility will not be visibly identifiable to the general public. Accordingly, the Proposed Facility is consistent with the surrounding uses and will not have a detrimental impact on the surrounding area.

(e) Conformance with the general plan and City policies.

Response: This Application is consistent with the Property's existing zoning and with the surrounding land uses. The current 2010 Apache Junction General Plan designates the Property as Medium Density Residential land use. However, it is very unlikely the Property would be developed with a residential development. The Property is already zoned B-5 for industrial uses and all adjacent properties along 18th Avenue (the Property's north street frontage) are also zoned industrial and include a variety of existing, intense industrial uses. Medical marijuana cultivation and infusion are (i) conditionally permitted uses in the B-5 zoning district, (ii) are previously approved and operated uses on the Property and (iii) are consistent with the existing industrial uses that surround the Property.

Importantly, the City is currently in the process of updating its General Plan. The Future Land Use Map within the most recent draft of the proposed 2020 Apache Junction General Plan designates the Property for 'Light Industrial/Business Park and Industrial – a land use designation consistent with the Proposed Facility. The Proposed Facility is therefore consistent with the City's vision for this Property and the area.

(f) Screening and buffering of uses.

Response: No additional screening or buffering is required as part of this Application. The residential community to the east is buffered from the Proposed Facility by Tomahawk Road (a major north-south thoroughfare) and screened from view by the existing building and block walls that surround the perimeters of both the Property and the residential community. The mobile home park to the south is similarly buffered by an approximate 16-foot wide alley and screened from view by the Property's block wall.

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

Response: In December 2010, Arizona voters passed the Arizona Medical Marijuana Act (AMMA), which went into effect in April 2011. The AMMA designated AZDHS as the licensing and issuing authority for the Arizona Medical Marijuana Program ("AMMP"), which includes regulating the production (growing, infusing, extracting, etc.) and dispensing of medical marijuana. AZDHS assigned once license to each Community Health Analysis Area ("CHAA") within the State, which permitted one medical marijuana

dispensary and one off-site cultivation and/or infusion facility associated with the medical marijuana dispensary.

According to AZDHS records, in 2011—the first year of the AMMP—just over 16,000 medical marijuana registration cards were issued to qualifying patients. Qualifying conditions include Alzheimer's, cancer, chronic pain, HIV/AIDS, Post-Traumatic Stress Disorder, and others. Since 2011, there has been a significant increase in the issuance of medical marijuana registration cards, patients, and demand for medical marijuana. According to AZDHS' 2019 September monthly report, 210,308 medical marijuana cards have been issued to qualifying patients—an increase of more than 1,300% from 2011.

Apache Junction's Zoning Ordinance requires that a medical marijuana cultivation and infusion facility be located on property zoned B-5 and that such property be located more than: 1,320-feet from another medical marijuana use; 750-feet from a school, day care center, place of worship, or drug/alcohol rehabilitation facility; and 750-feet from other sensitive land uses as determined by the Zoning Administrator. Because of these stringent zoning and separation requirements as well as the development patterns around properties zoned B-5, there are few properties that qualify for medical marijuana uses, making it exceedingly difficult to find available property to satisfy the tremendous increase in demand for medical marijuana. This Property is properly spaced from all protected uses and is located alongside many other industrial uses. It is therefore among the scarce Properties that are eligible and appropriate for a medical marijuana use.

Lastly, as previously stated, because there will be no signage on the Property relating to the Proposed Facility—unlike many other industrial uses that are open to the public and permitted on the Property by right—the Proposed Facility will be inconspicuous from the exterior of the building and will not be visibly identifiable from the street or to the general public.

Conclusion

As detailed by the foregoing, this Application satisfies all approval criteria of the requested CUP. From a land use perspective, the Property remains an appropriate location for a medical marijuana facility, as was the case when medical marijuana cultivation and infusion was first approved on the Property in 2014. From an operations standpoint, Nabis, the new managers of Perpetual Healthcare, will use its experience in managing and operating medical marijuana facilities in Arizona and throughout the United States to ensure safe and successful operations of the Proposed Facility in full compliance with all applicable requirements and laws of the State of Arizona, AZDHS and the City of Apache Junction.

We appreciate your consideration of this Application and look forward to discussing this request with you in the near future.

PLANNING AND ZONING COMMISSION
RESOLUTION NO. CUP-4-17

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, APPROVING CASE NO. CUP-4-17, A CONDITIONAL USE PERMIT AMENDMENT, AMENDING PLANNING AND ZONING COMMISSION RESOLUTION NO. CUP-2-15 TO ALLOW PERPETUAL HEALTHCARE INC., REPRESENTED BY LINDSAY SCHUBE OF GAMMAGE AND BURNHAM, TO CONSTRUCT A PERMANENT BUILDING AT THEIR NON-PROFIT MEDICAL MARIJUANA CULTIVATION AND INFUSION KITCHEN FACILITY ON A PROPERTY OWNED BY MBD HOLDINGS LLC AT 1575 E. 18TH AVENUE.

WHEREAS, on or about May 27, 2014, the City of Apache Junction Planning and Zoning Commission approved case CUP-2-14, Planning and Zoning Commission Resolution No. CUP-2-14 ("Reso. #CUP-2-14"), a Conditional Use Permit request from Nature's Wonder Inc. and Capital Care Connections LLC (applicants), represented by Michael J. Curley of Earl, Curley and Lagarde, P.C., to operate a non-profit medical marijuana cultivation site and infusion kitchen facility (the "Facility") in existing buildings located at 1575 E. 18th Avenue; and which property 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 (also known as Pinal County Assessor Parcels #102-07-215 and 102-07-216A); and

WHEREAS, on or about August 17, 2015, City staff was informed by the Arizona Department of Health Services that "mobile minis" had been added at the facility and queried if the City had approved the use of said mobile minis; and

WHEREAS, in late August 2015, City staff met with the new operators of the facility, Perpetual Healthcare Inc., and informed their representatives that the use of cargo containers required an administrative use permit and the use of mobile minis as additional work spaces was considered an expansion of the facility, according to the conditions of approval of Reso. #CUP-2-14 and thus required the processing and approval of a conditional use permit amendment; and

WHEREAS, on or about December 8, 2015, the City of Apache Junction Planning and Zoning Commission approved case CUP-2-15

("Reso. #CUP-2-15"), a Conditional Use Permit Amendment request from Perpetual Healthcare Inc. (applicant), represented by Lindsay Schube of Gammage and Burnham, to expand the non-profit medical marijuana cultivation and infusion facility with temporary "mobile-mini" and cargo container units, including a condition that application for a second Conditional Use Permit Amendment be filed to remove the "mobile-mini" and cargo container units and replace them with a permanent structure within 18 months of approval of Reso. #CUP-2-15; and

WHEREAS, since May 27, 2014, both Nature's Wonder Inc. (around November of 2014) and later Capital Care Connections LLC became disassociated from said facility, although the remodeling work on the buildings was permitted to and performed by Capital Care Connections; and

WHEREAS, all conditions of approval of Reso. #CUP-2-14, and Reso. #CUP-2-15 are still in full force and effect, except as otherwise modified or amended by this new resolution.

NOW THEREFORE, BE IT RESOLVED by the Planning and Zoning Commission of the City of Apache Junction, Arizona, that a CUP amendment is hereby approved, allowing Perpetual Healthcare Inc. to operate and expand the non-profit medical marijuana cultivation and infusion kitchen Facility on the property owned by MBD Holdings LLC at 1575 E. 18th Avenue, with a permanent "building #3", as described in the plans, narrative and other materials submitted with case CUP-4-17, pursuant to Apache Junction City Code, Volume II, Land Development Code, Chapter 2 Zoning Ordinance, Article 1-6 Supplemental Regulations, Section 1-6-12 Medical Marijuana. The conditions of approval of Reso. #CUP-4-17 are hereby restated, modified and/or amended as follows:

- 1) The owners/operators of the non-profit medical marijuana cultivation and infusion kitchen Facility shall obtain all necessary approvals from the Arizona Department of Health Services ("ADHS") and the Pinal County Health Department prior to beginning medical marijuana cultivation and infusion kitchen operations in the new building.
- 2) The owners/operators of the Facility shall obtain and keep a City business license at all times during the operation of the medical 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 non-profit medical marijuana agents associated with the Facility shall register with the AJPD for the purpose of background checks and record keeping (including but not limited to, owners, employees, directors, board members, etc.).
- 5) No other non-profit medical marijuana cultivation, infusion or dispensary facilities shall be established in the Apache Junction city limits by New Horizons Services LLC, Perpetual Healthcare Inc. or any other entity, without first applying through the city's CUP process.
- 6) 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 medical marijuana; loitering in or around the premises; the sale of any products from the Facility.
- 7) 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.
- 8) 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.
- 9) Perpetual Healthcare Inc. shall keep and neatly maintain all landscape improvements along the property's 18th Avenue and Tomahawk Road frontages, in accordance with the city's Landscape and Screening Requirements.
- 10) All screening, fencing and security improvements on the property shall be kept in good condition and repair at all times.

- 11) The Applicants shall continue to operate the Facility in accordance with the submitted drawings and narrative documents submitted with CUP-4-17, or else the CUP shall be subject to revocation by the Planning and Zoning Commission.
- 12) The operators of the Facility shall cooperate with local police officials insofar as personnel updates, providing copies of agent registration cards, 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.
- 13) The 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 the CUP-4-17 applications with a total of 11 parking spaces, including one (1) ADA compliant space.
- 14) The operators of the Facility shall work with City staff to provide for high resolution security cameras at the Facility, including the new building #3.
- 15) Perpetual Healthcare Inc. shall provide to the city's Planning Division a copy of their articles of incorporation, including the names of the directors and officers.
- 16) Should ownership of the dispensary change at any time after approval of the CUP, the new owners shall operate the dispensary subject to the exact same conditions of approval, including the provision of all new ownership, operator and medical marijuana agent information (and updates) to the city's police department.
- 17) If changes in the members, directors and officers occur, Perpetual Healthcare Inc. shall keep the planning division informed of said changes. If at any time during the operation of the cultivation and infusion facility, the managing member of the LLC or a

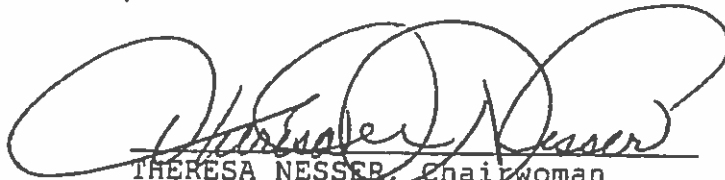
majority of the members, directors or officers changes, a CUP amendment shall be required.

- 18) The Planning and Zoning Commission shall reserve the right to reconsider or overturn the Applicant's CUP approval, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP-2-14 and CUP-2-15 and CUP-4-17 permit approvals.
- 19) Upon approval of the CUP, a building permit will be required and applied for with Development Services for building #3 within 180 days of the effective date of approval for Resolution No. CUP-4-17, the applicant will have a maximum of two (2) years from the effective date of Resolution No. CUP-4-17 to obtain a certificate of occupancy. The building permit shall require electrical, plumbing, odor control filters and dark sky compliant outdoor lighting. Any lighting proposed on the south side of the building shall follow dark sky regulations for light glare onto adjacent residentially-zoned properties.
- 20) Over the course of the two years from the effective date of approval, the two parcels shall be combined into one through a lot combination with Pinal County.
- 21) The applicant shall provide a site plan detailing what mobile mini units will be used during construction of the permanent building #3, and relocation if necessary. Relocation, including changes to utilities for the units will be subject to applicable building permits.
- 22) The new building #3 will have architectural details as depicted on the plans submitted with the CUP, have a stucco finish, and be painted desert neutral colors.
- 23) The applicant shall work with Superstition Mountain Community Facilities District #1 and/or adjacent property owners to connect to sewer as part of the building permit requirements.
- 24) Any future expansions or additional buildings will require an amendment to the CUP and be subject to applicable zoning, building, and engineering code requirements.

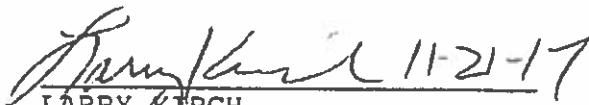
- 25) The Planning and Zoning Commission will issue no extension on the current CUP amendment under any circumstances
- 26) The Planning and Zoning Commission is requiring a public hearing meeting no later than January 23, 2018 for an update from the applicant relative to the completion of the CUP.
- 27) The Planning and Zoning Commission reserves the right to withdraw the approval of the CUP amendment for failure to demonstrate acceptable progress to the commission.

PASSED AND ADOPTED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF APACHE JUNCTION, ARIZONA, ON THIS 14th DAY OF November, 2017.


SIGNED AND ATTESTED TO THIS 21st DAY OF November 2017.


THERESA NESSER, Chairwoman
Planning and Zoning Commission

ATTEST:


LARRY KIRCH
Development Services Director

APPROVED AS TO FORM:

 11-20-17
RICHARD J. STERN
City Attorney