

RESOLUTION NO. 2023 - _____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA
APPROVING GRANT OF ABUTTER'S RIGHTS
AND AUTHORIZING THE CITY MANAGER TO
EXECUTE ALL DOCUMENTS NECESSARY TO
COMPLETE THE TRANSFER**

WHEREAS, on or about May 4, 1987, the County of Merced ("County") acquired via two grant deeds that certain real property described as a 20-foot-wide strip of land ("Property") along McKee Road for road purposes, previously owned by the predecessor-in-interest to Merced Holdings, LLC ("Merced Holdings") (See Exhibit 1 – Grant Deed identified in Vol 2611 page 581.)

WHEREAS, one of the two grant deeds, identified in Vol 2611, Page 583, of the Official Records of the County, relinquished and released all of abutter's rights of access to the Property previously held by the prior owner. (See Exhibit 2 – Grant Deed identified in Vol 2611 page 583.)

WHEREAS, the City of Merced ("City") subsequently acquired title to the Property through the Hunt Family Annexation, which was completed on August 1, 2003.

WHEREAS, in 2020, the Planning Commission of the City of Merced ("Planning Commission") adopted Resolutions #4035 and #4036 approving Conditional Use Permit #1238 and Site Plan Review #455, respectively, regarding the construction of a mixed-use development consisting of 214 apartment units and approximately 37,000 square feet of commercial uses (retail and office) within four buildings (two two-story buildings and two three-story buildings) on approximately 5.94-acre parcel generally located at the southeast corner of Yosemite Avenue and McKee Road ("Hub Planned Development Project"). Merced Holdings is the developer of the Hub Planned Development Project.

WHEREAS, Merced Holdings now desires abutter's rights of access that were relinquished and released by Grant Deed (Vol. 2611, Page 583) to be restored to them for purposes of completing the Hub Planned Development Project, plus additional area needed for the Hub Planned Development Project ("Additional Land"), as described and defined in the Grant of Abutter's Rights of Access attached hereto as Exhibit 3.

WHEREAS, the City finds that the Hub Planned Development Project advances housing and economic development opportunities and agrees to grant abutter's rights of access to the Property and Additional Land, pursuant to the terms of the Grant of Abutter's Rights of Access attached hereto.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby finds that the foregoing recitals are true and correct.

SECTION 2. Resolution No. 2023 ____ is hereby adopted.

SECTION 3. The City Council has determined that the successful completion of the Hub Planned Development Project is in the best interest of the City and its residents.

SECTION 4. The City Council approves the transfer of the abutter's rights of access to Merced Holdings, that were previously relinquished and released by Merced Holdings' predecessor-in-interest, as described in the Grant Deed (Vol. 2611, Page 583) that was recorded in the Recorder's Office for the County of Merced on May 29, 1987, and are described in Exhibit 2, as well as abutter's rights of access to the Additional Land.

SECTION 5. The City Council authorizes the City Manager or her designee to execute the Grant of Abutter's Rights of Access pursuant to the terms stated therein.

SECTION 6. The City shall retain fee ownership to the Property and the Additional Land.

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PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the _____ day of _____ 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Mayor

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:



City Attorney

12.5.22

Date

EXHIBIT 1

All that real property described in Grant Deed to Merced County, recorded on May 29, 1987, in Volume 2611, Official Records, Page 581, Merced County Records, situated in a portion of Section 16, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said real property being more particularly described as follows:

A 20 foot wide strip of land being the west 20 feet of the south 200 feet of the north 364 feet of Lot 150, "Map of Bradley's Addition No. 3", Volume 4, Official Plats, Page 43, Merced County Records.

EXHIBIT 2

All that real property described in Grant Deed to Merced County, recorded on May 29, 1987, in Volume 2611, Official Records, Page 583, Merced County Records, situated in a portion of Section 16, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, relinquish and release all abutter's right of access to the following:

The east line of the south 185 feet of the west 20 feet of the south 200 feet of the north 364 feet of Lot 150, "Map of Bradley's Addition No. 3", Volume 4, Official Plats, Page 43, Merced County Records.

And the north 149 feet of the west line of Lot 150, "Map of Bradley's Addition No. 3", Volume 4, Official Plats, Page 43, Merced County Records

EXHIBIT 3

GRANT OF ABUTTER'S RIGHTS OF ACCESS

RECORDING REQUESTED BY

City of Merced
Engineering Department
678 W. 18th Street
Merced, CA 95340

AND WHEN RECORDED MAIL TO

City of Merced
City Clerk's Office
678 W. 18th Street
Merced, CA 95340

(Portion of APN 008-310-038 & 053)

GRANT OF ABUTTER'S RIGHTS OF ACCESS

The undersigned grantor(s) declare(s)

Documentary transfer tax is \$0, CA Rev & Tax Code § 11922

- ☐ computed on full value of property conveyed, or
☐ computed on full value less of liens or encumbrances remaining at time of sale.
☐ unincorporated area ☒ City of Merced

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF MERCED, a California Charter Municipal Corporation ("Grantor" or "City"),

hereby GRANTS to

MERCED HOLDINGS, LP, a Nevada Limited Partnership ("Grantee")

Abutter's Rights of Access to that certain real property described in **Exhibits A and B** hereto ("Property") on the terms and conditions set forth in this Grant of Abutter's Rights of Access ("Agreement"). Grantor and Grantee are at all times herein collectively referred to the "Parties."

RECITALS

WHEREAS, Grantee's predecessor-in-interest was the previous owner of the portion of the Property described in Exhibit A, who recorded two grant deeds in favor of the County of Merced which relinquished both title and access to that portion of the Property ("Previously Deeded Portion").

WHEREAS, a description of the Previously Deeded Portion is in the grant deed (Vol. 2611, Page 581) that was recorded in the Recorder's Office for the County of Merced on May 29, 1987, for street purposes.

WHEREAS, a description of the abutter's rights of access that were relinquished and released as described in the grant deed (Vol. 2611, Page 583) that was recorded in the Recorder's Office for the County of Merced on May 29, 1987.

WHEREAS, the City acquired title to the Property in the Hunt Family Annexation that was completed on August 1, 2003, pursuant to Government Code section 56000 et seq., also known as the "Cortese-Knox-Hertzberg Reorganization Act of 2000 (the "Act").

WHEREAS, Grantee now requires rights of access in order to commence and complete construction of the Hub Planned Development Project (the "Development Project").

WHEREAS, the City has determined the Development Project to be in the best interest of the City and its residents.

WHEREAS, the City has agreed to grant the abutter's right back to the Grantee pursuant to this Agreement consistent with its previously held abutter's rights of access and additional rights as described in Exhibit B.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND THE MUTUAL OBLIGATIONS AND AGREEMENTS HEREIN CONTAINED, THE PARTIES HEREBY AGREE AS FOLLOWS:

AGREEMENT

SECTION 1. Grant of Abutter's Rights

The City hereby grants to Grantee, its successors and assigns, the abutter's rights to that portion of McKee Road described in **Exhibit B** for the purpose of ingress and egress to McKee Road.

SECTION 2. Indemnification

Grantee shall at all times comply with all laws, ordinances, rules and regulations of municipal, state and federal governmental authorities and all City policies, administrative regulations, and rules relating to the installation, maintenance, height, location, use, and operation authorized herein, and, to the furthest extent permitted by California law, Grantee shall fully defend, hold harmless and indemnify the City of Merced, its officials, employees and agents against any and all injury, loss, damage or liability, or any claims, actions, or proceedings which may be sustained or incurred by the City, including costs or expenses (including reasonable attorney's fees of counsel who shall be reasonably approved by City) as a result of: (i) Grantee's activities on or in the vicinity of the Property, site or access area, including but not limited to, negligent construction, installation, operation or removal of such Improvements; (ii) or which may arise from any challenge seeking to attack, set aside, void, or annul any governmental approval, adoption, or decision required for Grantee's use of the Site or Access Area; (iii) or which in any way arises out of the use and/or occupancy of the Property by Grantee, except to the extent solely attributable to the gross negligence or intentional acts of the City.

SECTION 3. Recording

Grantee shall, at its expense, record this Agreement in the Merced County Recorder's Office, and shall provide Grantor with conformed copies of the recorded instrument, as well as executed originals of all documents.

SECTION 4. Binding Effect

The rights and responsibilities set forth in this Agreement shall inure to and bind the Parties hereto, their heirs, representatives, successors, and assigns and also constitute covenants running with the land.

SECTION 5. Prohibited Uses

Grantee shall not commit or permit its Contractors to commit, any acts on the Property, access area, or property, nor use or permit its Contractors to use the Property, access area, or property, in any way that violates or conflicts with: (i) any law, statute, ordinance, or governmental rule or regulation, whether now in force or hereafter enacted, that may govern the Property; and/or (ii) any provision of this Agreement.

IN WITNESS THEREOF, the Parties enter into this Agreement this _____ day of _____, 202__.

CITY OF MERCED, a California Charter
Municipal Corporation

By _____
Stephanie R. Dietz
City Manager

MERCED HOLDINGS, LP, a Nevada Limited Partnership
By: Yogi GP, LLC, a Nevada Limited Liability Company
As General Partner



By: Joseph S. Englanoff, as Trustee of Yogi Management
Trust, as Manager

ACKNOWLEDGMENT

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

State of California

County of Los Angeles

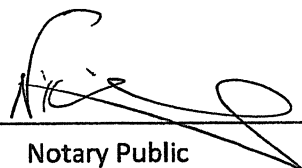
On November 11, 2022 before me, Nicole Danielle Herzberg
a Notary Public, Personally appeared Joseph S. Englaioff

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

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

WITNESS my hand and official seal.

Signature


Notary Public



(seal)

EXHIBIT A
THE PREVIOUSLY DEEDED PORTION OF THE PROPERTY

All that real property described in Grant Deed to Merced County, recorded on May 29, 1987, in Volume 2611, Official Records, Page 583, Merced County Records, situated in a portion of Section 16, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, said real property being more particularly described as follows:

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EXHIBIT B
ABUTTER'S RIGHTS OF ACCESS

All that real property described in Grant Deed to Merced County, recorded on May 29, 1987, in Volume 2611, Official Records, Page 583, Merced County Records, situated in a portion of Section 16, Township 7 South, Range 14 East, M.D.B. & M., City of Merced, County of Merced, State of California, relinquish and release all abutter's right of access to the following:

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