

BP INVESTORS, LLC

2206 East Muncie Avenue

Fresno, CA 93720

559.298.9300

Email : fresno3rdm@aol.com

April 11, 2019

Merced City Council
c/o John Tresidder
Assistant City Clerk
678 W. 18th Street
Merced, CA 95340

HAND DELIVERED

Re: Appeal of Planning Commission Action
Extension of VTSM #1291 (Bright Development)
Agenda Item 4.2 for April 3, 2019

Merced City Council Members:

Pursuant to Merced Municipal Code Section 18.16.140A, the undersigned hereby files this appeal of the City Planning Commission's action granting the application by Bright Development, a California corporation on behalf of CEB Holdings, LLC, for an extension of Vesting Tentative Subdivision Map (VTSM) #1291 at its meeting on April 3, 2019 and requests a hearing of this appeal by the City Council.

This appeal is filed on behalf of BP Investors, LLC; Leeco, LLC; Exposition Properties, LLC and the undersigned member of, or agent for, these business entities, as interested parties, and owners of real property adjacent to the planned subdivision VTSM # 1291. I submitted written comments and personally appeared at the hearing of this matter, and offered objections to the Commission's decision and action made and taken on April 3, 2019.

Statement of Appeal

This appeal is based on the following grounds:

1. Granting the Application for Extension of VTSM #1291 Constitutes an Abuse of Discretion Pursuant to Government Code Section 66498.1

Government Code section 66498.1 provides, in relevant part:

“(c) Notwithstanding subdivision (b), the local agency may condition or deny a permit, approval, extension, or entitlement if it determines any of the following:

- (1) A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.
- (2) The condition or denial is required in order to comply with state or federal law.”

We contend that there is substantial evidence that VTSM #1291, as modified by the Planning Commission on October 3, 2018, will result in the creation of “... a condition dangerous to the health and safety of the residents of the subdivision and the immediate community...”, including the future residents of our student housing project previously approved by the City Council, located on the north side of Merrill Place, contiguous to VTSM #1291.

The student housing project currently provides for the construction of 128 dwelling units with 325 parking spaces to accommodate the vehicles of the future student residents. The vehicles belonging to the future student residents, as well as the future residents of VTSM #1291, will all enter and exit those two developments by way of Merrill Place and access “G” Street at the uncontrolled intersection of Merrill Place and “G” Street.

“G” Street is designated by the *MERCED VISION 2015 GENERAL PLAN* as a Major Arterial (see page 4-76) and will be developed as a six-lane roadway divided by a raised median without openings, except at ¼ mile intervals (see page 4-9), together with full “Driveway Access Restrictions” (see page 4-9). According to the *MERCED MUNICIPAL CODE of ORDINANCES*, “G” Street is a designated “truck route” (Section 10.40.010 F) and has an established speed limit of 55 miles per hour [Section 10.16.010 A (53. g)] deemed by the City of Merced to be “...reasonable and safe...” *without direct access* onto a Major Arterial. The “G” Street and Merrill Place intersection is not signalized, and consistent with the *MERCED VISION 2015 GENERAL PLAN*, it is not intended to be. During peak

a.m. and p.m. hours, this intersection will create significant traffic safety issues, due to vehicles attempting to make left-hand turns from southbound “G” Street onto eastbound Merrill Place, and left-hand turns from Merrill Place onto southbound “G” Street, not to mention right-hand turns from Merrill Place into northbound traffic on “G” Street, unless safety conditions or mitigation measures are included in VTSM #1291, as required in Mitigation Measure 7-a of the Mitigation Monitoring Program for the Expanded Initial Study # 04-02, “Absolute-Leeco Annexation”, and identified as EXHIBIT G (Planning Commission Resolution #2871) to the **PRE-ANNEXATION DEVELOPMENT AGREEMENT (“PADA”)**.

Emergency vehicles will enter and exit the Bright Development subdivision from Merrill Place, or through the Emergency Vehicle Access (“EVA”) along “G” Street in the northern portion of the development. The residents of the Bright subdivision and the student housing project, along with some Emergency Vehicles for these two projects, will also use the Merrill Place roadway to enter and exit these two developments under emergency conditions. The Bright development has 161 residences planned, many with two vehicles or more, and the proposed student housing development includes parking for a minimum 325 vehicles.

As a result of Bright’s design of VTSM #1291 and the approved student housing project, there will be only one point of access for all of the expected residents (over 1,000), and consequently, the health and safety of all residents in this community area will be placed in a condition dangerous to their health and safety during emergency situations, such as fire, traffic accidents, violence, etc., and on a daily basis entering and exiting Merrill Place to and from “G” Street.

2. Granting the Application for Extension of Time Would Constitute a Breach of the City’s Pre-Annexation Development Agreement with Applicant and Us.

We contend that the City’s granting Bright’s application for an extension of VTSM #1291 constitutes a breach of the City’s express duties under the PADA, entered into in 2006 with Bright Development and ourselves, as required by Government Code Section 65864 et seq. and Recital B of the PADA, to wit: “...provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules and regulations and subject to the conditions of approval of such projects as provided in such annexation and/or development agreements.”[See Government Code

Section 66498.1(c)(2)] The Comments submitted to the Planning Commission on April 2, 2019, and the testimony offered by me at the April 3, 2019 hearing before the Commission support this contention. (See “Comments for the April 3, 2019 Planning Commission Hearing,” including attachments, which are attached hereto and incorporated by reference herein). The provisions from the PADA that support this argument are Recitals B, C, D, E, and F, along with EXHIBIT C of the PADA, and relevant excerpts from the Circulation Element of the 2015 General Plan. It is particularly noteworthy that the 2015 General Plan does not mention Emergency Vehicular Access, but rather requires access to or from Major Arterials to be “... restricted to internal streets or frontage roads.” (See page 4-76)

I have cited Government Code Section 66474.2(a) and attached a copy of this section in support of our contention that when the Tentative Subdivision Map was deemed complete in 2006, the MERCED VISION 2015 GENERAL PLAN was in full force---not the MERCED VISION 2030 GENERAL PLAN--- which was referred to a number of times in the current Conditions of Approval for VTSM #1291. [See Planning Commission Resolution # 2904, as modified on October 3, 2018]. In my letter dated January 30, 2019, to the Site Plan Review Committee I cited Planning Commission Resolution #2904, as modified, and set forth Conditions of Approval Nos. 12, 13, 22, 33, 34, 36, 41, 42, and 43, that violate the PADA executed by the City of Merced; Bright Development, a California corporation; BP Investors, LLC; Leeco, LLC; and Absolute, LLC (Exposition Properties, LLC’s predecessor in interest, by assignment), in support of our objection to the City’s reference to and incorporation of conditions that rely on the MERCED VISION 2030 GENERAL PLAN that was not adopted by the City Council until 2012.

Based on these and other facts in the record, the Merced City Council must exercise its discretion and deny this application for an extension by Bright Development, unless and until the potentially dangerous traffic conditions enumerated above are corrected by further modification to the Conditions of Approval for VTSM #1291 consistent with the PADA mandated 2015 General Plan, in order to protect the health and safety of subdivision residents, students, and other residents of the immediate community area, and as required by statute.



RICK TELEGAN

MERCED : OBJECTIONS and COMMENTS FOR THE APRIL 3, 2019 PLANNING COMMISSION HEARING, ITEM # 4.2

On behalf of BP Investors, LLC, Exposition Properties, LLC and Leeco, LLC, property owners adjacent to the 39.8 acres that is the subject of VTSM # 1291, I submit the following objections and comments in opposition to City Staff's recommendation for Item 4.2 on the Agenda for the Planning Commission meeting scheduled for April 3, 2019.

The current updated Staff Report for the April 3, 2019 hearing fails to discuss or address the objections and comments previously submitted to City Staff by me on behalf of the property owners listed above, which are included by reference in the following objections and comments :

1. On January 16, 2007, the City approved VTSM # 1291 and made the mandatory findings of consistency with the MERCED VISION 2015 GENERAL PLAN, that was in effect at that time, and the City adopted Environmental Document # 06-26 for its decision and action. Two weeks earlier, the City had approved VTSM # 1292 ("The Palisades") that was north of and adjacent to VTSM # 1291.
2. All extensions of VTSM # 1291, that was originally adopted by the City, were made by State Legislation from 2007 through 2016.
3. The Palisades (VTSM # 1292) expired on January 2, 2018, thereby substantially changing the environmental background and baseline assumptions utilized for the VTSM # 1291 approval in January, 2007 .
4. On October 3, 2018, VTSM # 1291 was modified by the Planning Commission to include an Emergency Vehicle Access ("EVA") on the west side of the subdivision and along the northbound lanes side of "G" Street, due to the earlier expiration of The Palisades subdivision map.. The October 3 modification of VTSM # 1291 resulted in a significant and substantial change to VTSM # 1291, because the original VTSM # 1291 required two points of access

for residents of the subdivision for internal circulation for the project (one to the north through the previously approved and anticipated The Palisades subdivision, and exiting out onto Foothill Drive, and one to the south along Merrill Place). The altered circulation configuration results in a major change to the project description and a substantial change in the traffic safety impacts for the future residents of VTSM # 1291 at Merrill Place and "G" Street. The future intersection of "G" Street and Merrill Place does not have, and according to the 2015 General Plan, will not have a traffic signal and will, therefore, be controlled solely by a stop sign exiting onto a Major Arterial street, as defined in the 2015 General Plan. The environmental review document cited by the City Staff Report for this action was # 18-56. No updated environmental review document was prepared, circulated, or adopted by formal resolution of the Planning Commission in regards to the action taken by the Commission. Further, no Notice of Determination or Notice of Exemption was prepared or filed with the County Clerk despite the discretionary actions of the Planning Commission.

5. The decisions and actions, and lack of action, made and taken by the Planning Commission at their October 3, 2018 meeting resulted in a project description that was not stable, finite, and accurate, and was substantially different from the 2007 version of VTSM # 1281 that was the subject of the environmental review document identified as # 06-26. That environmental review document was based on the 2015 General Plan as mandated by EXHIBIT C of the City signed, approved and recorded **PRE-ANNEXATION DEVELOPMENT AGREEMENT**.
6. With the described possible re-location of the stormwater drainage basin located within the PG&E public utility easement and partially located on our property, the proposed project description of VTSM # 1291 was further changed in reliance on Environmental Document # 06-26, which was adopted in 2007, *years prior* to the adoption of MERCED VISION 2030 GENERAL PLAN. Consequently, the Conditions of Approval are inconsistent with that environmental document to be relied upon for approval for the requested vesting tentative subdivision map extension.

7. At the time of the original approval of VTSM # 1291 in 2007 and just at the beginning of the 2007-2014 recession, the amount of development in proximity to VTSM # 1291 was minimal. The number of residents in north Merced was less than the number now, The University of California, Merced had substantially fewer students, Cardella Road had not yet been extended eastward from "M" to "G" Street, and there was very little buildout south of Bellevue Road between "M" & "G" Streets in the Bellevue Ranch community. During the time period from 2007 through October 3, 2018, there has been substantial development and growth in Bellevue Ranch and along "G" Street. The environmental background and setting is substantially different now than it was in 2007. An updated environmental review to VTSM # 1291 is necessary to reflect the changed project description, including internal circulation, increased traffic on "G" Street, the elimination of the northern access point for the future residents of VTSM # 1291 onto (un-built) Foothill Drive, the expiration of The Palisades tentative subdivision map, the amount of increased traffic at the intersection of Merrill Place and "G" Street that will result from the buildout of VTSM # 1291, and the possible re-location of the stormwater retention basin outside the current VTSM # 1291.
8. The April 3, 2019 Staff Report is incomplete due to the fact that it does not summarize or address all of the objections and comments set forth in my oral and written comments submitted to the City Staff, including the inconsistency of the changing project description and design in relation with the 2015 General Plan, and without limitation, the EVA included in the revised project description and Conditions of Approval, together with the need for a traffic study addressing the changed internal traffic circulation and the potential traffic congestion at the intersection of Merrill Place and "G" Street without a traffic signal.
9. With the October 3, 2018 Staff Report until now, the City has cited numerous inconsistent Environment Documents for the proposition that there is no requirement to provide an updated environmental review document or even consider the environmental impacts for an extension of a previously approved vesting tentative

subdivision map. That opinion is contrary to state law as it is in violation of the California Environmental Quality Act, which is one of the grounds for the Planning Commission to exercise its discretion to deny an extension for a substantially new and different project description for VTSM # 1291. Based on the outdated environmental review documents cited by Staff to be relied upon for the substantially new and significantly different project description of the subdivision, as well as the denial of the public's right to have a meaningful opportunity to comment on the recently proposed re-location of the stormwater drainage basin outside the VTSM # 1291 as currently presented, the Planning Commission must deny applicant's request for an extension.

MERCED : COMMENTS FOR THE APRIL 3, 2019 PLANNING COMMISSION HEARING

- * “ATTACHMENT D” included in your staff report is the **PRE-ANNEXATION DEVELOPMENT AGREEMENT** (“PADA”), fully signed and notarized by Bright Development, the City of Merced and us, and then recorded. It is noteworthy that the City *required* for Bright Development and ourselves to execute a Pre-Annexation Development Agreement (see Recital “J” included herewith) in order to gain support from the City for our annexation application. Recital “K” states that both Bright Development and ourselves desire to have our properties ...” be developed pursuant to policies in effect as of the date of this Agreement”... that includes EXHIBIT C of PADA.

On page 34, Section 35 (“Waiver”), a copy is included herewith, PADA permits a party to the Agreement to object at any time to a covenant, condition or obligation, now or in the future, whether or not that objection was made previously.

As a part of PADA :

Recital “B” states that the PADA is intended to... “provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules and regulations and subject to the conditions of approval of such projects as provided in such annexation and/or development agreements.”

Recital “C” refers to “...establishing the conditions under which such property may be developed in the City or may be annexed into the City and governing development of such property upon its annexation.”

Recital “D” mentions that City’s execution of PADA commits future City Councils, as well as all future City officials (through April, 2026), to “...to limit the future exercise of certain governmental and proprietary powers...”.

Recital “E” announces that “[T]he terms and conditions of this Agreement have undergone extensive review...” by all of the parties “...and have been found to be fair, just, and reasonable.”

Recital F declares that the “City finds and determines that it will be in the best interests of its citizens and the *public health*,

safety and welfare will be served by entering into this Agreement.” [Emphasis added]

California Government Code Section 66474.2(a), a copy is included herewith, requires that the local agency apply only those ordinances, polices and standards in effect at the time that the tentative map application was complete, which occurred in 2006. In 2006, the **MERCED VISION 2015 GENERAL PLAN** was the standard in full force at that moment, **NOT** the **MERCED VISION 2030 GENERAL PLAN** that was mentioned several times in the Conditions of Approval. On **EXHIBIT C (“LAND USE REGULATIONS”)** of the **PADA**, a copy is included herewith, the **MERCED VISION 2015 GENERAL PLAN** is shown as one of the guiding documents by which development projects, that are subject to the **PADA** referenced above, are considered.

Further, Section 2.9 of **PADA**, a copy is included herewith, more thoroughly describes what is and is not a part of the “Land Use Regulations”.

The Conditions of Approval (Planning Commission Resolution # 2904), as modified, violates the terms of the **ABSOLUTE-BRIGHT PRE-ANNEXATION AGREEMENT** executed by the City of Merced, Bright Development, a California Corporation, BP Investors, LLC, Leeco, LLC and Absolute, LLC (Exposition Properties, LLC’s predecessor by assignment), and re-recorded on March 20, 2008. Specifically those conditions that violate the recorded agreement are : # 12, # 13, # 22, # 33, # 34, # 36, # 41, # 42 & # 43.

The extension request by Bright Development must either be denied, or continued until such time when the City of Merced can change the Conditions of Approval (Resolution # 2904) to comply with the previously signed and recorded **ABSOLUTE-BRIGHT PRE-ANNEXATION DEVELOPMENT AGREEMENT**. Failure to do so would constitute a breach our Pre-Annexation Development Agreement with the City.

G. All of the procedures of the California Environmental Quality Act have been met with respect to this Agreement.

H. City was incorporated on April 1, 1889, and the City Charter was approved on April 12, 1949, and last amended in March 2002.

I. Owner is the fee or equitable owner of a an approximately 100 acre parcel of undeveloped land located within the City's sphere of influence, hereinafter referred to as the "Property" as legally described in Exhibit "A" and depicted on the map thereto, both attached hereto and made a part herein by this reference.

J. Owner has requested City to apply to the Merced County Local Agency Formation Commission ("LAFCO") to annex the Property. City is not opposed to Owner's request and will consider said request upon Owner's execution of this Agreement.

K. City and Owner desire that the Property be developed pursuant to policies in effect as of the date of this Agreement, including City Council Ordinance No. 2239 and City Council Ordinance No. 2240, as a residential planned development and pursuant to the land uses and conditions of Annexation/Rezoning Application #04-01 and Residential Planned Development (RP-D) #61 and Expanded Initial Study No. 04-02 (Mitigated Negative Declaration and Mitigation Monitoring Program).

L. The City Council of City hereby finds and determines that:

(1) The environmental impacts of the Project have been reviewed and all measures deemed feasible to mitigate adverse impacts thereof have been incorporated into the City approvals for the Project.

(2) No other mitigation measures for environmental impacts created by the Project, as presently approved, shall be required for development of the Project unless mandated by law.

(3) City may, pursuant to and in accordance with its rules, regulations, and ordinances, conduct an environmental review of subsequent discretionary entitlements for the development of the Project or any changes, amendments, or modifications to the Project. The City, as a result of such review, may impose additional measures (or conditions) to mitigate as permitted by law the

required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement. In the event, Owner or Owner's successor requires supplemental or additional agreements for purposes of securing financing or similar purposes, City will endeavor to assist in this respect, provided, however, Owner or Owner's successor shall reimburse the City for any and all costs associated with processing, reviewing, negotiating, or acting on such agreements. Owner or Owner's successor agrees to reimburse City within thirty (30) days of written demand therefor.

33. Rules of Construction and Miscellaneous Terms.

- (a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.
- (b) If there is more than one signer of this Agreement their obligations are joint and several.
- (c) The time limits set forth in this Agreement may be extended by mutual written consent of the parties in accordance with the procedures for adoption of the Agreement.
- (d) This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person, including but not limited to third party beneficiaries, shall have any right of action based upon any provision of this Agreement.

34. Running with Land. To the extent allowed by law, the conditions of this Agreement constitute covenants running with the land, and shall be enforceable by the City or by any present or future owner of any of the land described in Exhibit "A."

35. Waiver. In the event that either City or Owner shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

designation that will apply to the property in the event of a subsequent annexation of the property to the City.

B. The Legislature of the State of California has adopted California Government Code Section 65864-65869.5 ("Development Agreement Legislation") which authorizes a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries or in unincorporated territory within a city's sphere of influence for the development of such property in order to, among other things: encourage and provide for the development of public facilities; to support development projects; provide certainty in approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage an investment in and commitment to comprehensive planning, which will make maximum efficient utilization of resources at the least economic cost to the public land; provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules and regulations and subject to the conditions of approval of such projects as provided in such annexation and/or development agreements.

C. Pursuant and subject to the Development Agreement Legislation, the City's police powers, and City Council Resolution No. 95-6, City is authorized to enter into binding agreements with persons having legal or equitable interest in real property located within the City's municipal boundaries or sphere of influence thereby establishing the conditions under which such property may be developed in the City or may be annexed into the City and governing development of such property upon its annexation.

D. By electing to enter into this Agreement, City shall bind future Members of the City Council of City by the obligations specified herein and further limit the future exercise of certain governmental and proprietary powers by any Member of the City Council to the extent such limitation is provided in the Development Agreement Legislation.

E. The terms and conditions of this Agreement have undergone extensive review by the staff of the City, the City's Planning Commission, the City Council of City, and Owner, and have been found to be fair, just, and reasonable.

F. City finds and determines that it will be in the best interests of its citizens and the public health, safety and welfare will be served by entering into this Agreement.

EXHIBIT C
LAND USE REGULATIONS

Merced Vision 2015 General Plan, as amended through
April 4, 2005

Charter of the City of Merced, as amended through
March 5, 2002

Merced Municipal Code, as amended through May 2005

City of Merced Design Standards, as amended through
November 15, 2004

Merced Specific Urban Development Plan (SUDP)

C-1

N:\SHARED\Attorney\Agreements\Annexation & Pre-Annexation Development Agreements\Absolute-Leeco\Absolute Bright-Pre-Annexation
Development Agreement Final 2.21.06.DOC



California LEGISLATIVE INFORMATION

[Home](#)[Bill Information](#)[California Law](#)[Publications](#)[Other Resources](#)[My Subscriptions](#)[My Favorites](#)Code: Section: [Up^](#)[<< Previous](#)[Next >>](#)[cross-reference chaptered bills](#)[PDF |](#)[Add To My Favorites](#)**GOVERNMENT CODE - GOV****TITLE 7. PLANNING AND LAND USE [65000 - 66499.58]** (*Heading of Title 7 amended by Stats. 1974, Ch. 1536.*)**DIVISION 2. SUBDIVISIONS [66410 - 66499.38]** (*Division 2 added by Stats. 1974, Ch. 1536.*)**CHAPTER 4. Requirements [66473 - 66498]** (*Chapter 4 added by Stats. 1974, Ch. 1536.*)**ARTICLE 1. General [66473 - 66474.10]** (*Article 1 added by Stats. 1974, Ch. 1536.*)

66474.2. (a) Except as otherwise provided in subdivision (b) or (c), in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code.

(b) Subdivision (a) shall not apply to a local agency which, before it has determined an application for a tentative map to be complete pursuant to Section 65943, has done both of the following:

(1) Initiated proceedings by way of ordinance, resolution, or motion.

(2) Published notice in the manner prescribed in subdivision (a) of Section 65090 containing a description sufficient to notify the public of the nature of the proposed change in the applicable general or specific plans, or zoning or subdivision ordinances.

A local agency which has complied with this subdivision may apply any ordinances, policies, or standards enacted or instituted as a result of those proceedings which are in effect on the date the local agency approves or disapproves the tentative map.

(c) If the subdivision applicant requests changes in applicable ordinances, policies or standards in connection with the same development project, any ordinances, policies or standards adopted pursuant to the applicant's request shall apply.

(Amended by Stats. 1989, Ch. 847, Sec. 10.)

EXHIBIT C
LAND USE REGULATIONS

Merced Vision 2015 General Plan, as amended through
April 4, 2005

Charter of the City of Merced, as amended through
March 5, 2002

Merced Municipal Code, as amended through May 2005

City of Merced Design Standards, as amended through
November 15, 2004

Merced Specific Urban Development Plan (SUDP)

C-1

N:\SHARED\Attorney\Agreements\Annexation & Pre-Annexation Development Agreements\Absolute-Leeco\Absolute Bright-Pre-Annexation
Development Agreement Final 2.21.06.DOC

2.4 "Development Plan" means the Existing Development Approvals defined in Section 2.6 below which are applicable to development of the Project.

2.5 "Effective Date" means the date upon which the Ordinance approving this Agreement becomes effective, which date is thirty (30) days following the date the City Council adopted such Ordinance absent a referendum challenge.

2.6 "Existing Development Approval(s)" means those certain development approvals in effect as of the effective date of this Agreement with respect to the Property, including, without limitation, the "Existing Development Approvals" listed in Exhibit "B" attached hereto and incorporated herein by this reference, which were approved by the City.

2.7 "Financing District" means a Community Facilities District formed pursuant to the Mello-Roos Community Facilities Act of 1982, (California Government Code Sections 53311 *et seq.*, as amended, and referred to herein as the "Mello-Roos" Law); an assessment district formed pursuant to the Landscaping and Lighting Act of 1972, (California Streets and Highways Code Sections 22500 *et seq.*, as amended); a special assessment district formed pursuant to the Municipal Improvement Act of 1913, (California Streets and Highways Code Section 10100, *et seq.*, as amended); or any other special assessment district pursuant to State law or by virtue of the City's status as a Charter City, formed for the purposes of financing the cost of public improvements, facilities, services and/or public facilities fees within a specific geographical area of the City.

2.8 "Future General Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City applicable to all properties in the City after the Effective Date and as stipulated in Section 14 of this Agreement.

2.9 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City, governing the development and use of land including without limitation, the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; the provisions for reservation or dedication of land for public purposes; and the design, improvement, and construction standards and specifications applicable to the development of the Property listed on Exhibit "C" attached hereto and incorporated herein by this reference, which are a matter of

public record on the Effective Date of this Agreement. "Land Use Regulations" does not include any County or City ordinance, resolution, code, rule, regulation, or official policy governing:

- (a) The conduct of businesses, professions, and occupations;
- (b) Taxes and assessments;
- (c) The control and abatement of nuisances;
- (d) The redevelopment authority of the Redevelopment Agency of the City of Merced;
- (e) The provision, maintenance, expansion, termination, conditions and limitations of municipal water and sewer services;
- (f) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (g) The exercise of the power of eminent domain.

2.10 "Owner" means the person or entity having a legal or equitable interest in the Property and Project and all successors, transferees, or assigns thereof;

2.11 "Project" or "Projects" is the development of the Property in accordance with the Development Plan.

2.12 "Property" is the real property legally described in Exhibit "A" and depicted on the map thereto, both attached hereto and incorporated herein by this reference.

2.13 "Subdivision" shall have the same meaning as that term is defined in Government Code Section 66424.

2.14 "Subsequent Development Approvals" means all development approvals required subsequent to the Effective Date in connection with development of the Property.