

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

**Exempt Recording Per Gov't Code
Section 6103**

(Above for Recorder's Use Only)

**AGREEMENT CONTAINING COVENANTS
AFFECTING REAL PROPERTY**

**in respect to
HOME INVESTMENT PARTNERSHIPS PROGRAM LOAN**

THIS AGREEMENT (this "Agreement") is entered into this ____ day of _____, 2018, by and between the City of Merced (a California charter municipal corporation hereinafter referred to as the "City") and Merced Gateway Investors II, LP, a California Limited Partnership (hereinafter referred to as the "Developer"), pursuant to that certain City Loan Commitment Agreement dated July, 27, 2017 (the "CLCA" attached hereto as Exhibit B) between the Developer and the City of Merced (the "City"), with reference to the following:

A. The Developer is the present owner of the real property (the "Site") located in the City of Merced, County of Merced, State of California, legally described in the attached Exhibit "A".

WHEREAS, The Grantee has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383, HOME Investment Partnership Program Grant (M17-MC060227) (14.239 – HOME Entitlement Grant) under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended; and, with Federal award date September 22, 2017.

NOW, THEREFORE, THE CITY AND THE DEVELOPER AGREE AS FOLLOWS:

1. The Developer, on behalf of itself and its successors, assigns, and each successor in interest to the Site or any part thereof, hereby covenants and agrees:

(a) To use, devote and maintain the Site and each part thereof, for the purposes and uses specified in the Redevelopment Plan and in accordance with the zoning requirements of the Residential Planned Development zone. No building or any tenant space within a building may include visible bars or grates over or behind any window visible from a public street or right of way. Any permanent signage affixed to the building or windows must be of high quality materials, not including tempera paint.

If in the future, should the building be rezoned to allow commercial uses, the retail and commercial spaces on the Site shall be developed to a high standard and shall not be leased, rented to, or occupied by pawn shops, tattoo parlors, fortune-tellers, skateboard shops, or bail bonds businesses.

(b) To maintain the improvements and landscaping on the Site and keep the Site free from any accumulation of debris and waste materials.

(c) Not to discriminate upon the basis of sex, marital status, disability, race, color, creed, religion, age, national origin, or ancestry in the sale, lease, sublease, transfer or rental, or in the use, occupancy, tenure, or enjoyment of the Site or any improvements thereon, or of any part thereof. Each and every deed, lease, and contract entered into with respect to the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(1) In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or groups of persons on account of race, color, creed, religion, sex, disability, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

(2) In leases: “The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons on account of race, disability, color, creed, religion, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased.”

(3) In contracts: “There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, disability, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.”

2. There shall be no discrimination against or segregation of any person or groups of persons, on account of sex, marital status, disability, race, color, creed, religion, age, national origin, or ancestry in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any part thereof, nor shall the Developer, its successors, assigns, or successors in interest to the Site or any part thereof, or any person claiming under or through them, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, or vendees of the Site or any part thereof.

3. The covenants and agreements established in this Agreement shall, without regard to technical classification and designation, be binding on the Developer and any successor in interest to the Site, or any part thereof, for the benefit of and in favor of the City and the Agency, and its successors and assigns. Except as set forth in the following sentence and as otherwise set forth in the Loan Documents with respect to the HOME Loan, as such terms are defined in the Deed Restriction Covenant and Loan Agreement, dated as of _____, 2018, by and between the City and the Developer, the covenants in

paragraph 1 of this Agreement shall remain in effect until July 14, 2073. The covenants against discrimination contained in paragraphs 1 and 2 of this Agreement shall remain in perpetuity.

4. The covenants and restrictions contained in this Agreement shall not benefit nor be enforceable by any owner of any other real property within or outside the Project or any person or entity having any interest in any such other real property. Any amendments to the Redevelopment Plan which change the uses or restrictions or controls of the Redevelopment Plan that apply to the Site shall require the written consent of the fee owner of said Site at the time of said amendments. Amendments to the Redevelopment Plan applying to other real property in the Project Area shall not require the consent of such fee owner.

5. Any notice, request, demands, approvals or other communications given hereunder or in connection herewith shall be sent by registered or certified mail, return receipt requested, postage and fees prepaid and addressed to the party hereto to receive such notice, at its address as set forth as follows:

To Developer Merced Gateway Investors II, L.P.
3351 "M" Street, Suite 100
Merced, California 95348
Attention: Christina Alley

To City: City of Merced
Attention: Housing Division and City Clerk
678 West 18th Street
Merced, California 95340

With a copy to: City Attorney
City of Merced
678 West 18th Street
Merced, California 95340

Either party may, by notice given as aforesaid, change its address for any subsequent notice. Any notice shall be deemed given on the second day following its deposit in the United States mail. No party hereto shall be deemed to be in default of any provision hereof unless and until twenty-one (21) days notice thereof shall be given by one party to the other, and then the party in default shall have the absolute right to cure said default so long as such cure is commenced within a reasonable time, in no event longer than sixty (60) days, and such cure is diligently prosecuted to its conclusion. The foregoing is in addition to any of the provisions contained herein.

MERCED GATEWAY
INVESTORS II, LP,
A California Limited Partnership

By: Merced Gateway Investors
LP, a California Limited
Partnership

By: _____
Christina Alley

ADDRESS:

Merced Gateway Investors II, LP
3351 "M" Street, Suite 100
Merced, CA 95348
Attn: Christina Alley

ACKNOWLEDGEMENT

State of California

County of Merced

On _____, 2018, before me, _____, a
Notary Public, personally appeared _____

_____, 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 land referred to is situated in the unincorporated area of the County of Merced, State of California, and is described as follows:

Lots 1 to 8 inc., and Lots 25 to 32 inc., in Block 281 according to "Supplemental Map to Town of Merced", recorded March 4, 1889 in Book 1 of Maps, Page 12, Merced County Records.

APN: 031-323-002-000

Exhibit B

CITY LOAN COMMITMENT AGREEMENT

THIS CITY LOAN COMMITMENT AGREEMENT (“Commitment”) is made and entered as of this 17TH day of July, 2017, by and between the City of Merced, a California Charter Municipal Corporation (“City”) and Merced Gateway Investors II, a California Limited Partnership (“Borrower”).

RECITALS

A. The City is a partner with the US Department of Housing and Urban Development in developing quality affordable housing development.

B. The Borrower proposes to develop fifty (50) units of quality affordable housing called the Gateway Terrace II Apartments which will be located at 13th and K Street in the City of Merced (hereinafter referred to as the “Project”).

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. The City of Merced approves a contingent funding commitment for the Project for a loan from the following sources and in the following amounts:

- a. Fiscal Year 2016/17 Community Development Block Grant funds (B16-MC-06.0044, CFDA# - 14.218, Entitlement Grant): \$370,590; and
- b. Fiscal Year 2015/16 Community Housing Development Organization/HOME Investment Partnerships Program (B15-MC-06-0044, CFDA# - 14.239 HOME): \$150,000; and
- c. Fiscal Year 2016/17 Community Housing Development Organization/HOME Investment Partnerships Program (B16-MC-06-0044, CFDA# - 14.239 HOME): \$150,000; and
- d. Fiscal Year 2017/18 Community Housing Development Organization/HOME Investment Partnerships Program (B17-MC-06-0044, CFDA# - 14.239 HOME): \$214,410 and
- e. Fiscal Year 2017/18 Home Investment Partnerships Program (B17-MC-06-0044, CFDA# - 14.239 HOME); \$500,000.

2. The total loan amount to the Borrower is One Million Dollars Three Hundred Eight-Five Thousand Dollars (\$1,385,000). Each loan shall bear a three percent (3%) interest rate and shall be repaid by the Borrower as a fifty-five year deferred loan.

3. This Commitment shall require the subsequent preparation of a deed of trust and a regulatory agreement. Notwithstanding any language in this Agreement to the contrary, the Deed of Trust and Regulatory Agreement shall be required to be approved by the City, executed by the Borrower and recorded against the property on which the Project will be constructed prior to the City disbursing to the Borrower any of the funds referenced in the Agreement.

4. The Project shall be developed as described in Attachment 12, attached hereto. Attachment 12 consists of the preliminary Construction and Design Description for the proposed Project which describes Construction Design, Site Amenities, Unit Amenities, Affordability Period etc. for the Project. It is anticipated that there may be minor changes to the Project, but the Project shall be substantially the same as described in Attachment 12.

5. The Project shall comply with all applicable Federal, State and Local statutes, codes, regulation, ordinances and zoning requirements. The Project shall be well maintained with no broken glass, doors, exposed storage, sheets on windows, etc. All areas with landscaping shall be kept clean and be maintained at all times. No loitering shall be permissible except in common areas designated at a gathering area within the Project.

6. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

7. The funding for the Project is contingent on the City's actual receipt of funding from the US Department of Housing and Urban Development. The Project funding shall be solely provided from the funding sources outlined in Section 1 of this Commitment. In the event that the City's funding allocation from the US Department of Housing and Urban Development is less than the amount outlined and anticipated in Section 1 of this Commitment, the City will not fund the difference for the Project or provide any additional funding from its general fund or any other funding source. This Commitment is not intended to describe all of the requirements, term, conditions and documents necessary for the loan or construction of the project.

8. The loans identified in Section 1 of this Commitment for fiscal year 2015/2016, 2016/2017 and 2017/2018 shall be approved and individually executed by the City and shall be contingent on the funding being included within the City Housing Division's budget for the corresponding fiscal year. The loan amounts shall also be required to be identified in each of the corresponding US Department of Housing and Urban Development's Annual Action Plans prior to the execution of the loan agreements.

9. This Commitment expires on July 17, 2018, or at the start of construction, whichever occurs first.

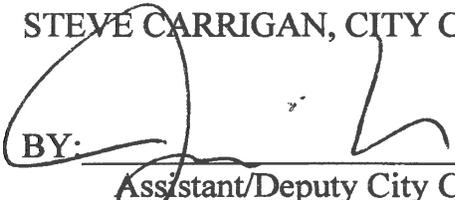
10. This Agreement supersedes and replaces any and all prior Loan Commitment Agreements regarding the Gateway Terrace II project, including, but not limited to the prior Loan Commitment Agreement between the City of Merced and Central Valley Coalition for Affordable Housing dated August 15, 2016.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: 
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: 
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY:  7/12/17
City Attorney Date

300396 PO#: 127486
ACCOUNT DATA:

BY: Stephanie Dutz
Verified by Finance Officer

Funds available. use 7/19/17

018-1301-552-29-00
\$ 370,590.00

033-1349-552-29-00
\$ 1,014,410.00

v-17839
PL 7/19/17

CENTRAL VALLEY COALITION
FOR AFFORDABLE HOUSING,
A Non-Profit Corporation

BY: Christina Alley
(Signature)

Christina Alley
(Typed Name)

Its: Chief Executive Officer
(Title)

Taxpayer I.D. No. 77-0242399

ADDRESS: 3351 "M" Street, Ste. 200
Merced, CA 95348

TELEPHONE: (209) 388-0782

FAX: (209) 385-3770

E-MAIL: Chris@centralvalleycoalition.com

MERCED GATEWAY INVESTORS II,
A California Limited Partnership

BY: Christina Alley
(Signature)

Christina Alley
(Typed Name)

Its: Chief Executive Officer
(Title)

Taxpayer I.D. No. _____

ADDRESS: 3351 "M" Street, Ste. 200
Merced, CA 95348

TELEPHONE: (209) 388-0782

FAX: (209) 385-3170

E-MAIL: Christina@CentralValleyCoalition.com