

This document prepared by and after recording return to:

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

CONSENT AND ESTOPPEL AGREEMENT

This Consent and Estoppel Agreement ("Agreement") is made and entered into as of the ___ day of June, 2020 between the **CITY OF MERCED**, a municipal corporation (the "City"), **AB MERCED, LLC**, a California limited liability company ("Assemi"), and **BELLEVUE MERCED LLC**, a California limited liability company ("Bellevue", collectively or individually, as the context may suggest or require, Assemi and Bellevue are referred to herein as "Developer"), and **BANK OZK** (the "Lender").

WITNESSETH:

WHEREAS, Bellevue Ranch Associates, a California limited partnership ("Bellevue Associates"), and Bellevue Ranch Partners, a California limited partnership ("Bellevue Partners", along with Bellevue Associates, hereinafter collectively referred to as "Bellevue"), and the City entered into that certain Development Agreement for Bellevue Ranch (the "Development Agreement") dated June 4, 1995 and recorded July 11, 1995, in Volume 3370, Page 576 of the Official Records of Merced County California, as amended by that certain First Amendment to Development Agreement (the "First Amendment") for Bellevue Ranch between the City of Merced and Bellevue, dated effective February 21, 1996, and recorded March 8, 1996 in Volume 3449, Page 1 of the Official Records of Merced County California, as further amended by that certain Second Amendment to Development Agreement (the "Second Amendment") for Bellevue Ranch, between the City of Merced and Bellevue, dated effective as of September 3, 1996, and recorded October 16, 1996 in Volume 3523, Page 645 of the Official Records of Merced County California, and assumed by that certain Assumption Bellevue Ranch Development Agreement (the "Assumption"), effective as of March 18, 2003, by Don Gragnani and Thelma Irene Gragnani, Co-Trustees, The Don Gragnani and Thelma Irene Gragnani Family Trust, under Declaration of Trust, dated December 17, 1992 (a Revocable Living Trust); Donald Jerry Gragnani and Ana Maria Gragnani, Co-Trustees, The Donald Jerry Gragnani and Ana Maria Gragnani Family Trust, under Declaration of Trust, dated June 22, 2001 (a Revocable Living Trust); Steve Lloyd and Jeanne Gragnani Lloyd, Co-Trustees, The Steve Lloyd and Jeanne Gragnani Lloyd Family Trust, under Declaration of Trust, dated May 26, 1998 (a Revocable Living Trust); Jerry Gragnani, Trustee, The Gianna Suzanne Gragnani Exempt Trust, under Declaration of Trust, dated October 25, 2000; Jerry Gragnani, Trustee, the Donnie Giovanni Gragnani Exempt Trust, under Declaration of Trust, dated October 25, 2000; Jeanne Lloyd, Trustee, the Vincent Lewis Marshall Exempt Trust, under Declaration of Trust, dated October 25, 2000; Jeanne Lloyd, Trustee, The Tanya Marie Marshall Exempt Trust, under Declaration of Trust, dated October 25, 2000; Don Gragnani, Trustee, The Don Gragnani 2001 Grantor Retained Annuity Trust, under Declaration of Trust, dated December 18, 2001 (an Irrevocable Living Trust); and Thelma Irene Gragnani, Trustee, The Thelma Irene Gragnani 2001 Grantor Retained Annuity Trust, under Declaration of Trust, dated December 18, 2001 (an Irrevocable Living Trust) (hereinafter collectively referred to herein as "Gragnani" or the

"Initial Developer") and recorded August 29, 2003 as Document number 2003-055486 in the Official Records of Merced County; as further assigned and assumed by that certain Assignment and Assumption of Bellevue Ranch Development Agreement (the "Assignment and Assumption"), entered into as of March 19, 2003, by and between the Initial Developer and Crosswinds at Bellevue LLC, a California limited liability company, or its nominee or assignee under that certain Purchase Agreement dated March 26, 2002 by and between Gragnani and Blas-B Corporation ("Replacement Developer") recorded September 3, 2003 as Document Number 2003-055939 in the Real Property Records of Merced County;

WHEREAS, prior to entering into the Development Agreement the city approved on May 15, 1995 the Bellevue Ranch Master Development (the "Master Plan");

WHEREAS, the Development Agreement, the Master Plan and all other documents and agreements incorporated therein and related thereto are herein referred to as the "City Agreements";

WHEREAS, Assemi acquired the Assemi Property (as defined herein) by that certain Grant Deed recorded May 29, 2020, as Document Number 2020017249 in the Official Records of Merced County, California;

WHEREAS, Bellevue acquired the Bellevue Property (as defined herein) by that certain Grant Deed recorded June 4, 2020, as Document Number 2020017995 in the Official Records of Merced County, California;

WHEREAS, Lender has agreed to make a loan ("Loan") to Developer under and pursuant to the terms and provisions of that certain Loan Agreement between Lender, as lender, and Developer, as borrower (the "Loan Agreement") dated as of June __, 2020, which Loan is further evidenced by that certain Term Promissory Note, of even date with the Loan Agreement, in the principal amount of TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00) (the "Term Note") bearing interest as specified therein and that certain Revolving Promissory Note of even date with the Note in the principal amount of TWELVE MILLION FOUR HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$12,450,000.00) (the "Revolving Note"), bearing interest as specified therein (said Term Note and said Revolving Note together with any and all renewals, modifications and extensions thereof being hereinafter collectively called the "Note"), secured, inter alia, by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Lien Instrument") and that certain Collateral Assignment of Development Agreement, of even date with the Loan Agreement, by and between Lender and Developer (the "Collateral Assignment", the Collateral Assignment, the Lien Instrument and all other such agreements referred to above and otherwise relating to the Loan are referred to herein collectively as the "Loan Documents") covering that certain land described in Exhibit A-1 attached hereto and incorporated herein by this reference (herein called the "Assemi Property") and that certain land described in Exhibit A-2 attached hereto and incorporated herein by reference (herein called the "Bellevue Property," collectively the Assemi Land and the Bellevue Land are the "Property"); and

WHEREAS, the Lender has agreed to enter into the Loan Agreement with Developer, subject, among other things, to the execution by the City of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Lender and the City agree as hereinafter set forth:

1. Consent. Pursuant to the requirements of Section 11 of the Development Agreement, the City hereby consents to the Collateral Assignment and to the Lien Instrument. Nothing herein, or in the City Agreements, shall be deemed to limit the Lender's right to receive, and Developer's ability to make, payments and prepayments of principal and interest on the Note, or to exercise its rights pursuant to the Loan Documents, including, but not limiting to, the right of Lender or a third party assignee of Lender to take title to the Property through a Deed-in-Lieu transaction or to foreclose on the Property pursuant to the terms and conditions of the Loan Documents.

2. Notice of Default. The City shall give to the Lender, (a) copies of any notices of default which the City may give to Developer with respect to the Project pursuant to the Loan Documents or the City Agreements, and (b) copies of waivers, if any, of Developer's default in connection therewith. Under no circumstances shall Developer or any third party be entitled to rely upon the agreement provided for herein. The City agrees that (i) the Lender shall have the right, but not the obligation, to cure Events of Default under the Development Agreement and the City shall accept such cure as if such cure had been made by the Developer pursuant to the terms of the Development Agreement, and (ii) all funds, reimbursements or payments to be made to Developer pursuant to the City Agreements (whether in the nature of cash, promissory notes or otherwise) shall instead be directed to Lender.

3. Estoppel. The City and the Developer hereby represent and warrant to the Lender that (i) other the First Amendment and the Second Amendment and City Ordinance No. 2331 adopted on May 4, 2009 and Draft City Ordinance No. 2516 to be considered by the City Council for introduction on June 29, 2020, the City Agreements are unmodified and in full force and effect; (ii) there are no current uncured defaults under the City Agreements; (iii) there are currently no sums due and owing by any party under the City Agreements; (iv) notwithstanding anything to the contrary contained in Section 4.6 of the Development Agreement the parties have not yet entered into a separate Fee Schedule Agreement; and (v) there are no current development or construction obligations to be performed by Developer under the City Agreements.

4. Waivers. No waiver shall be deemed to be made by the City or the Lender of any of their respective rights hereunder, unless the same shall be in writing, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the City or the Lender in any other respect at any other time.

5. Governing Law; Binding Effect. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws and decisions of the State of California, without regard to its conflict of laws principles, and shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the Lender. The City agrees that any lender refinancing the Loan shall be a beneficiary of this Agreement and afforded the same rights and remedies of Lender under this Agreement as if such lender were a party to this Agreement.

6. Section Titles; Plurals; Defined Terms. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the plural form. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Development Agreement.

7. Notices. Any notice required hereunder shall be in writing and addressed to the party to be notified as follows:

If to the City:

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

If to Lender:

Bank OZK
325 W. Capitol
Little Rock, AR 72201
Attn: Matt Buchanan

With copies To:

With Copies To:

Winstead PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
Attn: Kevin A. Sullivan

or to such other address as either party may designate for itself by notice. Notice shall be deemed to have been duly given (i) if delivered personally or otherwise actually received, (ii) if sent by overnight delivery service, (iii) if mailed by first class United States mail, postage prepaid, registered or certified, with return receipt requested, or (iv) if sent by facsimile with facsimile confirmation of receipt (with duplicate notice sent by United States mail as provided above). Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) business days after its deposit in the United States mail. Notice given in any other manner described in this paragraph shall be effective upon receipt by the addressee thereof; provided, however, that if any notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

IN WITNESS WHEREOF, this Agreement has been signed as of the date first written above.

BANK OZK

By: _____
Matt Buchanan
Its: Senior Vice President

CITY OF MERCED
A Municipal Corporation

By: _____
CITY MANAGER

ATTEST:

BY: _____
DEPUTY CITY CLERK

APPROVED AS TO FORM:

BY: *Prudence A. Miller*
CITY ATTORNEY

FUNDS/ACCOUNT/VERIFIED

BY: _____
FINANCE OFFICER

DATE: _____

ASSEMI:

AB MERCED, LLC,
a California limited liability company

By: _____,
Name: Farshid Assemi
Title: Manager

By: _____,
Name: Farid Assemi
Title: 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 _____)

On _____, 2020, before me, _____, 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 _____ (Seal) _____

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 _____)

On _____, 2020, before me, _____, 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 _____ (Seal)

BELLEVUE:

BELLEVUE MERCED, LLC,
a California limited liability company

By: _____

Name: Farid Assemi

Title: 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 _____)

On _____, 2020, before me, _____, 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 _____ (Seal)

EXHIBIT A

Property Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MERCED, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

TRACT A:

Remainder Lot, according to Map entitled "Paseo", in the City of Merced, County of Merced, State of California according to the map thereof recorded in Book 76 of Official Maps, Page(s) 39 through 44 inclusive, Merced County Records.

EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED BY CROCKER LAND COMPANY IN THE DEED RECORDED AUGUST 4, 1961 IN BOOK 1539, PAGE 594 OF OFFICIAL RECORDS, WITHOUT, HOWEVER, THE RIGHT TO DRILL THROUGH THE SURFACE OF SAID PROPERTY OR TO A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID PROPERTY.

ALSO EXCEPTING THEREFROM AN UNDIVIDED ONE-FOURTH INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED BY YOSEMITE LAND & CATTLE CO. AND C H M COMPANY IN THE DEED RECORDED MARCH 27, 1963 IN BOOK 1605, PAGE 112 OF OFFICIAL RECORDS, WITHOUT, HOWEVER, THE RIGHT TO DRILL THROUGH THE SURFACE OF SAID PROPERTY OR TO A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID PROPERTY

APN: 170-030-029

TRACT E:

Parcel One:

Parcel A, as shown on map entitled "Parcel Map", in the City of Merced, County of Merced, State of California according to the map thereof recorded August 29, 2006 in Book 103 of Parcel Maps, Pages 48 through 52, inclusive, Merced County Records.

EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED BY CROCKER LAND COMPANY IN THE DEED RECORDED AUGUST 4, 1961 IN BOOK 1539, PAGE 594 OF OFFICIAL RECORDS, WITHOUT, HOWEVER, THE RIGHT TO DRILL THROUGH THE SURFACE OF SAID PROPERTY OR TO A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID PROPERTY.

ALSO EXCEPTING THEREFROM AN UNDIVIDED ONE-FOURTH INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED BY YOSEMITE LAND & CATTLE CO. AND C H M COMPANY IN THE DEED RECORDED MARCH 27, 1963 IN BOOK 1605, PAGE 112 OF OFFICIAL RECORDS, WITHOUT, HOWEVER, THE RIGHT TO DRILL THROUGH THE SURFACE OF SAID PROPERTY OR TO A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID PROPERTY

APN: 170-060-015 and 170-060-018

Parcel Two:

Parcel D as shown on map entitled "Parcel Map", in the City of Merced, County of Merced, State of California according to the map thereof recorded August 29, 2006 in Book 103 of Parcel Maps, Pages 48 through 52, inclusive, Merced County Records.

EXCEPTING THEREFROM, the following:

All that portion of Parcel D as shown on that Parcel Map filed for record in Volume 103 of Parcel Maps 48-52, Merced County Records, situate in the Southeast quarter of Section 31, Township 6 South, Range 14 East, Mount Diablo Base and Meridian, City of Merced, County of Merced, State of California, being more particularly described as follows:

COMMENCING, at the Southeast corner of said Section 31 as shown on the Map of "Bella Vista Estates Unit No. 1", filed for record on October 18, 1967 in Volume 17 of Official Plats at Pages 47-49, Merced County Records; thence along the South line of Section 31 South 89° 56' 07" West, 1348.26 feet to the intersection of the Southerly prolongation of the West line of Lot 13 as shown on said map of "Bella Vista Estates Unit No. 1", also being the Easterly line of said Parcel D; thence along said Southerly prolongation and West line of Lot 13 North 00° 04' 01" West 238.17 feet to the TRUE POINT OF BEGINNING; thence continuing along said West line North 00° 04' 01" West 278.39 feet; thence along the Northerly line of said Lot 13 and said Easterly line of Parcel D North 49° 27' 34" East 48.64 feet; thence North 00° 04' 01" West 25.66 feet to the beginning of a non-tangent curve concave Northeasterly having a radius of 1500.00 feet, to which point a radial line bears South 74° 36' 58" West; thence Northerly 22.15 feet along said curve through a central angle of 00° 50' 46"; thence South 89° 55' 59" West 68.31 feet; thence parallel with and 37.00 feet Westerly of the West line of said Lot 13 South 00° 04' 01" East 161.15 feet to the beginning of a curve concave Easterly having a radius of 537.00 feet; thence Southerly 200.51 feet along said curve through a central angle of 21° 23' 36" to the TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED BY CROCKER LAND COMPANY IN THE DEED RECORDED AUGUST 4, 1961 IN BOOK 1539, PAGE 594 OF OFFICIAL RECORDS, WITHOUT, HOWEVER, THE RIGHT TO DRILL THROUGH THE SURFACE OF SAID PROPERTY OR TO A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID PROPERTY.

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APN: 170-060-021

Parcel Three:

Parcel B as shown on map entitled "Parcel Map", in the City of Merced, County of Merced, State of California according to the map thereof recorded August 29, 2006 in Book 103 of Parcel Maps, Pages 48 through 52, inclusive, Merced County Records.

EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED BY CROCKER LAND COMPANY IN THE DEED RECORDED AUGUST 4, 1961 IN BOOK 1539, PAGE 594 OF OFFICIAL RECORDS, WITHOUT, HOWEVER, THE RIGHT TO DRILL THROUGH THE SURFACE OF SAID PROPERTY OR TO A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID PROPERTY.

ALSO EXCEPTING THEREFROM AN UNDIVIDED ONE-FOURTH INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED BY YOSEMITE LAND & CATTLE CO. AND C H M COMPANY IN THE DEED RECORDED MARCH 27, 1963 IN BOOK 1605, PAGE 112 OF OFFICIAL RECORDS, WITHOUT, HOWEVER, THE RIGHT TO DRILL THROUGH THE SURFACE OF SAID PROPERTY OR TO A DEPTH OF 500 FEET BELOW THE SURFACE OF SAID PROPERTY

170-060-019 and 170-060-020