

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

(Above for Recorder's Use Only)

DEVELOPER AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____ 2016 by and between the City of Merced, a California Charter Law Municipal Corporation ("City") and Landmark Hill Investments, LLC, a California Limited Liability Company ("Owner").

W I T N E S S E T H

WHEREAS, Owner has applied to the City for a General Plan amendment and zone change for an approximately 1.1 acre parcel located on the north side of East 16th Street approximately 245 feet east of G Street, and as legally described on Exhibit "A," and shown on the Map at Exhibit "B," attached hereto and incorporated herein by this reference; and,

WHEREAS, City is willing to consider Owner's request provided that certain conditions are met.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

1. Owner, for himself and all successors thereto, agrees to pay all City and school district fees, taxes, and/or assessments in effect on the date of subdivision and/or permit approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time water/sewer connection and/or building or encroachment permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc.—and to comply with the additional conditions set forth in Exhibit "C," attached hereto and incorporated herein by this reference. Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

2. Owner desires to comply with the conditions of approval set forth on Exhibit "C," and within this Agreement and acknowledges that the conditions are necessary to mitigate the environmental impact caused by Owner's development or are necessary to offset the costs to the City generated by Owner's development including sewer connection costs pursuant to Chapter 15.16 of the Merced Municipal Code.

3. Owner agrees to pay all sewer connection costs imposed by the City as delineated in Section 15.16.070 of the Merced Municipal Code and to pay all other costs required by Chapter 15.16 of the Merced Municipal Code.

4. The Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, Owner shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which Owner's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the Owner of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the Owner shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

5. City, on its part, agrees to rezone the subject property to Conditional R-4 and change the General Plan designation to High Density Residential (HD) in accordance with Exhibit "B."

6. No building permit or other permit shall be issued that is not in compliance with this Agreement.

7. It is expressly agreed that this Agreement is not intended to limit the power of the City to impose other requirements, limitations, or fees, etc., as a condition of development, and does not relieve the Owner from complying with all other requirements that may be imposed as a condition of development, whether now in existence or hereinafter imposed by the City whether by zone change, subdivision map approval, ordinance, resolution, use permit, or otherwise. The parties agree that this Paragraph does not apply to the approval of a final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit "A."

8. 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."

9. Owner agrees to comply with and abide by all conditions set forth by the City relating to the development of the property subject to this Agreement, including installation of all required public improvements.

10. In the event of default by Owner, and in addition to any other remedy available to the City, the City shall have the right to rezone the land back to its original designation and/or to de-annex the land as appropriate.

11. In the event that either City or the 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.

12. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

13. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

14. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Law Municipal Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kenneth Rye 5/18/16
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
LANDMARK HILL INVESTMENTS, LLC,
A California Limited Liability Company

BY: José A. Díaz
José A. Díaz
Its: Managing Member

ADDRESS: P.O. Box 21628
San Jose, CA 95151

TELEPHONE: (408) 221-5618

FAX: _____

E-MAIL: jadiaz41@att.net

EXHIBIT "A"
LEGAL DESCRIPTION

Lot B as shown on the map entitled "Ritchey's Addition to Merced," recorded in Book 6, Page 9 of Merced County Records; also known as Assessor's Parcel Number (APN): 034-204-002.

General Plan Amendment #16-01
Zone Change #423
254 East 16th Street

MAIN

E

Change General Plan Designation
from
Thoroughfare Commercial (CT)
to
High Density Residential (HD)

SUBJECT SITE
APN: 034-204-002

Change Zoning Designation
from
Thoroughfare Commercial (C-T)
to
R-4

99

16TH

16TH

99

99



- 1) The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), - Attachment C of Staff Report #16-10, except as modified by the conditions.
- 2) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- 3) All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
- 4) Approval of the General Plan Amendment and Zone Change is subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
- 5) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental

EXHIBIT C

entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

- 6) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
- 7) The developer shall work with the City Engineer to determine the requirements for storm drainage on the site and the method used to move the storm water to the City's storm drainage system. The developer shall provide all necessary documentation for the City Engineer to evaluate the storm drain system. All storm drain systems shall be installed to meet City Standards and state regulations.
- 8) The project shall comply with all the Post Construction Standards required to comply with state requirements for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
- 9) Street trees shall be provided per City Standards. Tree species shall be selected from the City's approved street tree list.
- 10) Appropriate turning radii shall be provided within the parking area to allow for Fire Department access.
- 11) All driveways into the site shall comply with City Standards and all handicap accessibility requirements.
- 12) All landscaping in the public right-of-way shall comply with State Water Resources Control Board Resolution No. 2015-0032 "To Adopt an Emergency Regulation for Statewide Urban Water Conservation" or the most recent water regulations adopted by the State and City addressing water conservation measures. If turf is proposed to be installed in park-strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed. All irrigation provided to street trees or other landscaping shall be provided with a drip irrigation or micro-spray system.

- 13) Detailed landscape and irrigation plans shall be submitted at the building permit stage. These plans shall include all on-site landscaping and all required landscaping in the public right-of-way.
- 14) As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, alleyway, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
- 15) In order to ensure safe pedestrian access, a sidewalk shall be installed on the west side of E Street from Main Street to the alley and installed or reconstructed as needed from the project site to the proposed bus stop on East 16th Street. The alleyway shall be reconstructed between D and E Streets. Details to be worked out with Engineering staff.
- 16) All mechanical equipment shall be screened from public view.
- 17) If the use changes from this specific tenant/business, sufficient parking in compliance with the City's Zoning Ordinance shall be provided to serve the new tenant/business, unless otherwise approved by the Director of Development Services.
- 18) If gates are installed on the site preventing vehicular access, "click 2 enter" access shall be provided on all gates to provide access to the site for emergency personnel (i.e., police, fire, ambulance, etc.).
- 19) Sufficient parking shall be provided for the healthcare services being provided on site. If a problem arises due to a lack of parking for the services provided on the site, the developer shall provide sufficient parking or reduce the services provided at the site, or provide an alternate means of transportation to the site for clients seeking services.
- 20) All units shall comply with the handicap accessibility requirements of the California Building Code.
- 21) Fire sprinklers shall be provided to all dwelling units and other areas as required by the California Fire Code.
- 22) If a kitchen is provided in the Community Building, it shall meet the requirements of the building, fire, health and safety, and any other applicable codes for a "commercial kitchen."

- 23) Prior to any demolition work being done (interior or exterior), the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District and a demolition permit from the City of Merced Inspection Services Department if required.
- 24) The applicant shall work with the City's Refuse Department to determine the best location for the refuse enclosure. The enclosure shall be constructed per City Standards.
- 25) A backflow prevention device shall be provided for all water services (i.e., domestic, irrigation, and fire) with appropriate screening of those devices installed. Details to be worked out with staff.
- 26) All healthcare practitioners operating on the site, shall obtain a City of Merced Business License and possess all required state licenses to operate in such capacity.
- 27) Prior to the issuance of a building permit, the project applicant or any successor in interest, shall retain a licensed professional or firm to evaluate noise levels affecting the project site, and whether the existing structures can attenuate existing transportation noise levels sufficiently to meet the City's interior standard of 45 dB ldn. If interior standards cannot be met by the existing structures, the report shall identify measures necessary to meet the interior standards. Prior to occupancy, all needed structural improvements shall be completed.
- 28) The site is located within the City's Design Review boundary. As such, any exterior changes to the building or changes to the site require Design Review approval. Such approval may be granted by staff or referred to the Planning Commission, as determined by the Director of Development Services.
- 29) Healthcare, including medical, dental, and mental health care, is allowed within the areas designated on the site plan as "clinic" and "office" (in the community center). No other commercial uses, except those meeting the requirements of a Home Occupation, shall be allowed on the site.
- 30) Sufficient lighting shall be provided on the site to create a safe environment. Lighting shall be provided throughout the site, including along the alleyway. Lighting from the site shall not spill-over onto any adjacent properties.
- 31) Animals shall not be housed in the animal companion area overnight.
- 32) An on-site manager shall be provided and be available 24 hours a day, 7 days a week.

- 33) The developer and management shall be responsible for keeping the site clean and free of trash, debris, and graffiti.
- 34) Each single-occupancy unit is allowed one tenant. Each double-occupancy unit is allowed two tenants.
- 35) Secure access and lighting shall be provided in the bike parking area.
- 36) Security cameras shall be installed on the site and along the alleyway near the bike parking area.
- 37) All parking lot and building lighting shall be shielded or oriented in a way that does not allow “spill-over” onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent parcels.
- 38) The site would be eligible for a building sign equal to one-square-foot of sign area for each linear foot of building frontage. No freeway signs shall be allowed for this use. The two existing freeway signs shall be removed prior to occupancy of the units. A building permit is required prior to the installation of any permanent signing. A Temporary Banner Permit shall be obtained prior to installing any temporary banners. Freestanding temporary signs (i.e., sandwich board, A-frame, feather, or moveable signs of any type) are not allowed.
- 39) The property owner shall enter into a Conditional Zoning Agreement with the City to ensure compliance with the above conditions.

CALIFORNIA ALL- PURPOSE CERTIFICATE OF 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 Santa Clara }

On May 24, 2016 before me, Vanessa Drieda, Notary Public
(Here insert name and title of the officer)

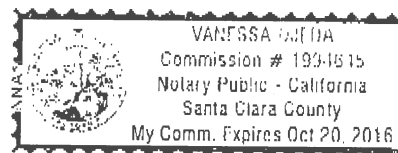
personally appeared Jose A. Diaz
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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.

Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Developer Agreement
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 11 Document Date _____

CAPACITY CLAIMED BY THE SIGNER

- ☒ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.