

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)

DOCUMENT TITLE

SUBDIVISION AGREEMENT (CFD CONDITION)

A SUBDIVISION AGREEMENT BETWEEN THE CITY OF MERCED AND CEB HOLDINGS,
LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, FOR THE MERZOIAN ESTATES,
PHASE 1 SUBDIVISION TO BE RECORDED CONCURRENTLY WITH THE FINAL MAP
FILED THIS ____ DAY OF _____ 2024, AT _____.M. IN BOOK
_____ OF OFFICIAL PLATS, AT PAGES _____, MERCED COUNTY
RECORDS

**SUBDIVISION AGREEMENT
(CFD Condition)
(Bonds as Security)**

THIS AGREEMENT, made and entered into _____, 2024, between the City of Merced, a California Charter Municipal Corporation, hereinafter called "City," and CEB Holdings, LLC, a California Limited Liability Company, hereinafter called "Subdivider," relates to the construction of certain public improvements within Phase 1 (as defined below) of the Merzoian Estates, a subdivision of approximately 39.35 acres of real property ("Project Site") within the corporate limits of City, comprised of a first phase of approximately 16.25 acres and 3.1 acres for a drainage basin ("Phase 1") and a second phase comprised of an additional 20.0 acres ("Phase 2") This Subdivision Agreement relates to the construction of public improvements within Phase 1 only and the parties intend to enter into a separate subdivision agreement at a later date regarding the construction of public improvements within Phase 2.

RECITALS

A. The Planning Commission of City, on November 8, 2006, adopted Resolution No. 2904 approving the Vesting Tentative Subdivision Map #1291 for the above-mentioned subdivision ("VTM"). On October 3, 2018, the Planning Commission approved a modification to the VTM. The life of the VTM has been extended a number of times via a series of state-granted automatic extensions and City-granted extensions.

B. Subdivider has submitted for approval of the final map of said subdivision in full compliance with applicable provisions of State Law and City subdivision ordinances. Final Map Application Number 5398 ("Final Map") was submitted by the Subdivider on August 20, 2021. A complete Final Map Application (including all bonds and insurance) was filed with the City on _____, 20__.

C. Section 18.24.100 of the Merced Municipal Code requires certain public improvements as a condition of approval for said subdivision.

D. Improvement plans (dated October 10, 2023) (collectively, "Improvement Plans") for said subdivision have been approved by City.

E. The "Subdivision Map Act" and Section 18.24.150 of the Merced Municipal Code require certain security to guarantee the construction of said improvements.

F. Inspection fees required in accordance with Section 18.24.110 of the Merced Municipal Code have been paid.

G. Condition of Approval No. 5 for the VTM requires the Subdivider to have annexed the Project Site into City's Community Facilities District (CFD) for public safety, maintenance, and other services (CFD No. 2003-2) prior to obtaining a Final Map for the Project Site. The Project Site was annexed to City's CFD for Services (No. 2003-2) as part of Annexation No. 22, and therefore Condition of Approval No. 5 has been satisfied.

H. This Subdivision Agreement is consistent with the Pre-Annexation Agreement, dated April 17, 2006, between the City of Merced, Absolute, LLC, LEECO, LLC, BP Investors, LLC and Bright Development, a California corporation.

Based upon the foregoing recitals, and in consideration of the mutual covenants, promises, and agreements herein contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto mutually agree as follows:

AGREEMENT

1. AGREEMENT TO CONDITIONS IMPOSED

Subdivider, for itself and all successors thereto, acknowledges and agrees to all conditions imposed in the Planning Commission Resolution approving the VTM as identified in Recital A above.

2. IMPROVEMENTS

A. Pursuant to the terms of this Agreement, Subdivider agrees to construct all public improvements, which shall include but not be limited to: street improvements, construction of water, sewer and stormwater system, street lights, curb gutter, access ramps, sidewalks, paths, landscaping, concrete masonry unit CMU, walls, fencing, underground utilities, and other items, all as set forth and described in the approved Civil Improvement Plans for Phase 1 of Merzoian Estates (collectively, "Work") to be made and constructed within twelve (12) months of the date of City approval of the final map for the adjacent subdivision (VTM No. 1312 Subdivision Map No. 5393) that is similarly conditioned to construct the Work, in full compliance with the requirements of approved VTM, the Conditions of Approval thereto, and the City's "Standard Designs for Common Engineering Structures," and with the Improvement Plans approved by City and any changes or alterations in such work reasonably required by City, and to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of said Work, and for any labor done thereon of any kind, and any amounts due under the Unemployment Insurance Act with respect to such Work.

B. The Subdivider may request an extension of time to complete the terms hereof. Such request shall be submitted to the City in writing no less than four (4) weeks before the expiration date hereof, and shall contain a statement of circumstances necessitating the extension of time. The City shall have the right to review the provisions of this Agreement, including the construction standards, cost estimate, and improvement security, and to require adjustments therein if any substantial change has occurred during the term hereof.

C. If the Subdivider fails or neglects to comply with the provisions of this Agreement such that a default exists, after notice and a failure to cure said default within sixty (60) days thereof (provided, however, if the nature of the alleged default is such that it cannot reasonably be cured within such 60-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period), City shall have the right at any time after such cure period to cause said provisions to be met by calling the relevant security(ies) provided for hereunder, and thereupon recover from the Subdivider and/or its surety the full cost and expense incurred pursuant to the terms hereof.

3. SECURITY-FILING OF THE SAME

The Subdivider shall file securities for this Agreement per Sections 66496, 66499 and 66499.3 of the Government Code as follows and as shown on Exhibit "A" attached hereto:

A. To secure faithful performance of this Agreement, security in an amount equal to one hundred (100%) percent of the estimated cost of the Work as determined by the City shall be filed with the City prior to the Final Map application being considered complete or action on the same by the City Council.

B. To secure payment to the contractor, its subcontractors, and to persons furnishing labor, materials, or equipment to them, security in an amount equal to fifty (50%) percent of the estimated cost of the Work as determined by the City shall be filed with the City prior to the Final Map application being considered complete or action on the same by the City Council.

C. To secure the guarantee and warranty of the Work for a period of one (1) year following the completion and acceptance of the Work, security in an amount equal to fifteen (15%) percent of the estimated cost of the Work as determined by the City shall be filed with the City prior to final acceptance of the Work by the City.

D. To secure payment of the cost of setting of monuments, security in an amount equal to one hundred (100%) percent of the estimated cost of setting such monuments as determined by the City shall be filed with the City prior to the Final Map application being considered complete or action on the same by the City Council.

If security is furnished in the form of a bond or bonds, such bonds shall be executed by a corporate surety company authorized to transact surety business in the State of California. Liability for security furnished as described herein shall be limited as set forth in Government Code Sections 66499.9 and 66499.10.

4. SECURITY-RELEASE OF THE SAME

Release of Securities shall be as follows and subject to Government Code Section 66499.7:

A. Security given for faithful performance shall be released thirty-five (35) days after recording a Notice of Completion of the Work provided that evidence of recording of the Notice of Completion has been furnished to the City, the City has finally accepted the Work, and provided the security has been furnished to the City to guarantee and warrant the Work for one (1) year following the date of such acceptance of the Work.

B. Security securing the payment to the contractor, its subcontractors, and to persons furnishing labor, materials, or equipment shall be released six (6) months after recording a Notice of Completion provided no claims have been filed with the City in connection therewith in accordance with the Subdivision Map Act.

C. The security guaranteeing that the completed Work remains satisfactory during the required one-year warranty period shall be released at the end of said one-year period if no defects in the Work exist, or if defects exist, then upon correction, by Subdivider, of any defects in the Work existing at the end of the warranty period.

D. Monument security shall be released in accordance with the provisions of Section 66497 of the Government Code.

In the event that the Work does not conform to the approved Improvement Plans or defects are not corrected within the time limits specified by City, the City shall have the authority to cause the necessary work to be done and to recover the cost of such work, as well as any reasonable and actual costs of enforcing such obligation, including attorney fees, from the Subdivider and the Subdivider's surety or the financial institution providing the Instrument of Credit in accordance with the terms hereof.

5. INSPECTION

City shall inspect the Work made in connection with said subdivision for compliance with City requirements. Subdivider shall give at least twenty-four (24) hours' notice to City, including at least one (1) full working day prior to any inspection. If the Work is constructed without inspection by the City, it shall be subject to rejection. Subdivider shall pay to City an amount equal to three (3) percent of the total estimated cost of the Work as determined by City to cover the cost of inspection. Inspection by the City shall in no way relieve the Subdivider or its sureties of full responsibility for defective materials or workmanship (if any). Any costs associated with testing of improvements shall be paid by the Subdivider in advance of the testing.

Neither final inspection nor acceptance of the Work shall be permitted prior to receipt by City of sufficient monies to cover the cost of testing and inspection to the extent these activities exceed the above three (3) percent deposit.

6. SAFETY

Subdivider shall perform the construction of the Work in accordance with the applicable sections of Title 8 of the California Code of Regulations (CAL OSHA), and the "WATCH" (Work Area Traffic Control Handbook) published by Building News, Inc., and available at the City Engineer's office. Reasonable provisions shall be made by Subdivider for protection of the traveling public on all public roads affected by the construction of the Work. Specifically, barricades and related facilities shall be placed in such number and in such locations as for public safety, and at night they shall be equipped with flashing yellow lights. City reserves the right to require and Subdivider shall promptly install or place additional barricades or other facilities to assure public safety if City shall deem the same to be necessary or desirable for public safety during the construction of the Work.

7. INDEMNITY

The Subdivider shall take and assume all responsibility for the construction of the Work. The Subdivider shall bear all losses and damages directly or indirectly resulting to the City, its officers, employees, and agents on account of the construction of the Work pursuant to its indemnification obligations set forth in this Section 7.

The Subdivider shall protect, assume the defense of and indemnify and save harmless the City, its officers, employees, and agents from any and all claims, loss, damage, injury including the death of any person or persons, and liability of every kind, nature, and description, arising from or related to the construction of the Work.

The Subdivider 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, challenging the above-referenced subdivision and the approvals granted in connection therewith. Furthermore, the Subdivider 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 any governmental entity in which the above-referenced subdivision is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the Subdivider of any such claim, action, suit, or proceeding. Within ten (10) days of a notice from City thereof, Subdivider shall be responsible to deposit with the City the amount of Thirty-Five Thousand Dollars (\$35,000); at such time as said deposit is depleted to Five Thousand Dollars (\$5,000), the Subdivider shall replenish it within ten (10) days' written demand from City. If the Subdivider's indemnification obligation under this Section 7 is triggered, the Subdivider shall be required to promptly execute a separate and formal joint defense, indemnification, and deposit agreement that meets the reasonable approval of the City Attorney and to provide the foregoing deposit. In addition, the Subdivider shall be required to satisfy any monetary obligations imposed on City by any final order or judgment with respect to any such claim, action, suit or proceeding.

8. PREVAILING WAGES

Subdivider acknowledges that City has made no representation, express or implied, to Subdivider or any person associated with Subdivider regarding whether or not laborers employed relative to the construction of the Work to be constructed pursuant to this Agreement must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Section 1720, *et seq.* ("Prevailing Wage Laws"). Subdivider agrees with City that Subdivider shall assume any and all responsibility and be solely responsible for determining whether or not laborers employed relative to the construction undertaken pursuant to this Agreement must be paid the prevailing per diem wage rate pursuant to the Prevailing Wage Laws or other applicable law.

Subdivider, on behalf of itself, its successors, and assigns, waives and releases City from any right of action that may be available to any of them pursuant to Labor Code Section 1781 or any similar law with respect to the Work. Relative to the waiver and release set forth in this Section, Subdivider acknowledges the protections of Civil Code Section 1542, which reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, would have materially affected his or her settlement with the debtor or released party. By initialing below, Subdivider knowingly and voluntarily waives the provisions of Section 1542 or any similar law solely in connection with the waivers and releases contained in this Section.

Initials of
City Manager

Initials of Authorized
Subdivider Representative

Subdivider shall indemnify, hold harmless and defend City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Subdivider, its contractor(s) and subcontractors) to pay

prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations in connection with the construction of the Work required pursuant to this Agreement. Subdivider's defense of the City shall be provided by counsel reasonably acceptable to the City.

The foregoing indemnity shall survive any termination of this Agreement.

9. INSURANCE

Subdivider further agrees that before commencing construction of the Work pursuant to this Agreement, Subdivider shall obtain, and at all times prior to final acceptance of the Work hereunder, keep in full force and effect, insurance coverage in such limits and amounts as set forth below.

All policies of insurance must be issued by a company that is either:

- (1) Admitted to transact insurance business in the State of California;
- (2) On the "LESLI List," i.e., the List of Eligible Surplus Line Insurers; or,
- (3) In the form of a risk retention group ("RRG") so long as the RRG contains at least \$750,000 in capital, has been in operation for at least one year, and the reinsurance agreement associated with the RRG contains AM Best A rated insurers with an attachment point of \$250,000 or less.

All insurance companies must have an A.M. Best's rating of at least A- and a financial size of VIII. All required policies shall contain an endorsement adding the indemnified parties under the Agreement, specifically including the City, its officers, employees, and agents, as additional insureds. The required policies shall stipulate that this insurance will operate as primary insurance for the Work performed by Subdivider and its sub-contractors, and that no other insurance effected by City or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The additional insured endorsement required hereunder must be issued using ISO form CG 20 10 11 85, or the same form with an edition date no later than 1990. In lieu of CG 20 10 11 85, City will accept alternate additional insured endorsements on ISO forms CG 20 10 12 19 and CG 20 37 12 19, but only if both forms are used together and provided to City. The minimum coverage and limits shall be as follows:

COVERAGE	LIMITS
Workers Compensation	Statutory
Comprehensive General Liability, including or separately insuring liability assumed by contract	
Bodily Injury	\$1,000,000 per person \$1,000,000 per occurrence
Property Damage	\$500,000 per occurrence

Subdivider shall, prior to commencement of construction of the Work, furnish to City a certificate of insurance, which shall provide that the above insurance shall not be cancelled without thirty (30) days prior written notice to City. Prior to acceptance of the Work, the Subdivider shall provide the City with a copy of the endorsements required herein.

10. AS-BUILTS

Subdivider shall submit one (1) reproducible print (mylar) of the Work "as-built" to City prior to release of securities provided for hereunder.

11. NOTICE OF COMPLETION

City shall record a Notice of Completion with the Merced County Recorder immediately following City's acceptance of the Work.

12. APPROVALS

This Agreement is subject to approval by the City Manager of City as to substance, and by the City Attorney as to form. Any improvement securities tendered hereunder shall be subject to approval by the City Manager as to amount, and by the City Attorney as to form and legal sufficiency.

13. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

14. WAIVER

In the event that either City or Subdivider 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.

15. VENUE

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.

16. AMENDMENT

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

17. INTEGRATION

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

18. AUTHORITY TO EXECUTE

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.

19. COUNTERPARTS

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other party hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the day and year first herein written.

CITY OF MERCED
a California Charter Municipal Corporation
D. SCOTT MCBRIDE, CITY MANAGER

By: _____
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

By: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

By: Craig Cornwell 3/27/2024
City Attorney Date:

FUNDS/ACCOUNTS VERIFIED BY:
M. VENUS RODRIGUEZ, FINANCE
OFFICER

By: _____
Finance Officer Date:

SUBDIVIDER

CEB HOLDINGS, LLC,
a California Limited Liability Company

By: _____
Carol Bright Tougas

Its: _____
Title

Address: 1620 N. Carpenter Rd.
Building B
Modesto, CA 95351

Telephone: (209) 526-8242

Taxpayer I.D. Number: _____

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 _____, 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 _____

EXHIBIT A
Merzoian Estates Ph. 1

The securities for this subdivision shall be according, or equivalent to, either Method 1 or Method 2 below.

	METHOD 1		METHOD 2
Engineer's Estimate	Performance Bond	Labor & Materials Bond	Cash/Credit Security
\$5,837,688.79	\$5,837,688.79	\$2,918,844.40	\$7,005,226.55

One-Year Warranty Bond*	\$875,653.32
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*shall be provided prior to a Notice of Completion being filed