

BARBARA J LEVEY

Merced County Clerk – Recorder

P Public

Doc#: **2018026861**

Titles: 2 Pages: 29

Fees NO FEE



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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)

DEED RESTRICTION COVENANT AND LOAN AGREEMENT**In Respect of the
CDBG INVESTMENT PARTNERSHIP PROGRAM**

THIS DEED RESTRICTION COVENANT AND LOAN AGREEMENT ("Loan Agreement"), dated JUNE, 4, 2018, entered into by and between the City of Merced, a California Charter Municipal Corporation, ("City") and Merced Gateway Investors II, LP, a California Limited Partnership (the "Partnership"):

A. Pursuant to that certain City Loan Agreement Commitment between the City and the Merced Gateway Investors II, LP, a California Limited Partnership, the City has agreed to provide a loan in the amount of Three Hundred Seventy Thousand Five Hundred Ninety Dollars (\$370,590) (the "CDBG Loan") to Partnership for the construction of a multi-family affordable residential rental project (the "Project") on that certain real property owned by Partnership and located on K Street, between 12th & 13th Streets in the City of Merced, California, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"). The Project consists of fifty (50) units, of which thirty nine (39) units shall be restricted for occupancy by households with incomes at or below sixty percent (60%) of the Area Median Income ("AMI"), ten (10) units shall be restricted for occupancy for homeless veteran families, and one (1) manager's unit shall be restricted for occupancy by households with income at or below one hundred twenty percent (120%) of the AMI, all for a period of fifty-five (55) years from issuance of a final certificate of occupancy for the Project.

B. The CDBG Loan shall be funded from a grant in the amount of Three Hundred Seventy Thousand Five Hundred Ninety Dollars (\$370,590) from the U.S. Department of Housing and Urban Development ("HUD") made to the City pursuant to the CDBG Investment Partnership Program funds ("CDBG Program") and subject to the Funding Approval and CDBG Investment Partnerships Agreement (B-17-MC-06-0044) under the Community Development and Block Grant (CDBG) and administered by the U.S. Department of Housing and Urban Development ("HUD") (14.218-Entitlement Grant) with a Federal Award Date of September 22, 2017.

C. The CDBG Loan is being made pursuant to the CDBG Program, established and governed by Title II of Public Law No. 101-625, 104 Stat. 4079 (Nov. 28, 1990), (42 USC 12701), known as the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended by the Housing and Community Development Act of 1992, Public Law No. 102-550, and is subject to the requirements of 24 CFR part 92, the State CDBG Investment Partnerships Program Act (25 CCR Sections 8200 et. seq.) and the State Uniform Multifamily Regulations (25 CCR Sections 8300 et. seq.), as applicable.

ARTICLE I. LOAN OF CDBG FUNDS

SECTION 1.01 CDBG Loan. Subject to the satisfaction of the conditions set forth herein, the City loans to Partnership the amount of Three Hundred Seventy Thousand Five Hundred Dollars (\$370,590) in CDBG Program funds for the primary purpose of assisting with replacing on-site City sewer and water mains, replacing off-site sewer and water mains, ADA improvements to the nearby sidewalks, and for related expenses identified in the budget attached hereto as Exhibit "B", of which three (3) 2 bedroom units will be CDBG assisted units.

As a condition of the receipt of said CDBG Loan, Partnership agrees to carry out the projects as generally described in the City Loan Agreement Commitment attached as Exhibit "C", and the Scope of Development attached as Exhibit "D".

In accordance with 24 CFR Section 92.504(c)(vi), Partnership may periodically submit claims for disbursement of the CDBG Loan when the funds are needed for reimbursement of eligible costs identified in the budget. The amount of each such request shall be limited to the amount reimbursed. The request shall be accompanied by documentation of expenditures in such form as may be required by the City, including but not limited to submission of copies of documents such as paid invoices, payroll, time sheets, and other supporting source documents.

Partnership shall be liable for repayment of any CDBG Program grant proceeds disbursed to Partnership that are subsequently determined to constitute disallowed costs. Disallowed costs may be identified through audits, monitoring, or other sources. City shall make the final determination of disallowed costs subject to provisions of applicable CDBG Program regulations.

The CDBG Loan is to be evidenced by a Note executed by Partnership in favor of City and delivered to City concurrently herewith (the "CDBG Note"). Repayment of the CDBG Note is to be secured by the Deed of Trust and Security Agreement of even date hereof (the "Trust Deed"), covering the Property and the Project. Partnership shall execute the Trust Deed in favor of Placer Title Company as Trustor in trust for the benefit of City and deliver it to escrow for recordation.

That certain Regulatory Agreement and Declaration of Restriction Covenants of even date hereof (the "Regulatory Agreement") imposing covenants, conditions and restrictions running with the land is a material consideration for the making of the CDBG Loan. Partnership shall execute the Regulatory Agreement and deliver it to escrow for recordation. This Loan Agreement, the City Loan Commitment Agreement (CLCA), the CDBG Note, Trust Deed, Regulatory Agreement and documents related thereto, are referred to herein as the "Loan Documents."

SECTION 1.02 Conditions of Funding. The obligation of the City to disburse CDBG Loan proceeds pursuant to this Loan Agreement is subject to the following conditions:

1. Partnership shall provide the City with a corporate resolution or similar document approving and authorizing execution of this Loan Agreement and all documents contemplated hereby and with such other documents required by the City regarding Partnership's corporate status and ability to enter into this transaction.

2. Partnership shall provide the City with Certificates of Insurance in form and with insurers admitted in California acceptable to the City, evidencing compliance with the insurance requirements of this Loan Agreement on or prior to close of escrow on the property and upon demand by City at any time subsequent. If requested by the City, Partnership shall also provide copies of the required insurance policies.

3. As a material inducement to City to enter into this Loan Agreement and to make the CDBG Loan to Partnership, Partnership unconditionally, and each signatory who signs on its behalf, to the extent of their actual knowledge, represents and warrants to City, as of the date hereof, as follows:

(a) Partnership is duly formed and validly exists in the form stated in Article I, is qualified to do business in California, and has full power to consummate the transactions contemplated.

(b) Partnership has full authority to execute this Loan Agreement, the CDBG Note, the Trust Deed, the Regulatory Agreement and all of the other Loan Documents, to undertake and consummate the contemplated transactions, and to pay, perform, and observe all of the conditions, covenants, agreements, and obligations.

(c) This Loan Agreement, the CDBG Note, the Trust Deed, the Regulatory Agreement and each of the other Loan Documents constitutes a legal and binding obligation of, and is valid and enforceable against, each party other than City, in accordance with the terms of each.

(d) There are no actions, suits, or proceedings pending or, to the best knowledge of Partnership, threatened against or affecting Partnership, the Property, or any part of it, or involving the validity or enforceability of the Trust Deed, the priority of the lien, or the validity or enforceability of any of the other Loan Documents, at law or in equity, or before or by any local, state or federal governmental agency. Partnership is not in default with respect to any order, writ, injunction, decree, or demand of any court or other local, state or federal governmental agency.

(e) The consummation of the transactions covered by this Loan Agreement and the payment and performance of all of the obligations in the Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, contract, loan or credit agreement, corporate charter, bylaws, partnership agreement, trust agreement, or other instrument to which the Partnership or any of its general partners is a party or by which it or they or the Property may be bound or affected.

(f) There is no event of default or potential default on the part of Partnership under the Loan Documents or any other document relating to the financing of the Project.

(g) Partnership has not received financing for either the acquisition of the Property, the construction of the Project or the permanent financing of the Project except as has been specifically disclosed to and approved by City in writing.

(h) All proceeds of the CDBG Loan will be disbursed as provided in this Loan Agreement and used only for reimbursement of the costs of construction of the Project in accordance with the Plans and Specifications (as defined in the CLCA) and for other purposes specified in the CLCA and this Loan Agreement.

(i) The Plans and Specifications are satisfactory to Partnership and its general contractor and have been approved by the City and all other construction lenders. There are no structural defects in the Project as shown in the Plans and Specifications that are known to or reasonably should have been known to Partnership or its agents and employees, and to the best of Partnership's knowledge, no violation of any law, ordinance, order, rule, regulation, plan, ruling, determination or requirement of a local, state or federal governmental agency exists.

(j) All applications, financial statements, reports, documents, instruments, information, and forms of evidence delivered to City concerning the CDBG Loan or required by this Loan Agreement or any of the other Loan Documents are accurate, correct and sufficiently complete to give City true and accurate knowledge of their subject matter, and do not contain any untrue statement of a material fact or omit any material fact necessary to make them not misleading.

SECTION 1.03 Terms and Repayment of Loan. The parties agree that additional assistance in the Project is being provided by the City in the form of a CDBG Investment Partnership Program loan ("CDBG Loan"). The City shall provide a loan for the construction of four (4), 60% Area Median Income units. These units shall be located through-out the Project. Said CDBG Loan shall equal Three Hundred Seventy Thousand Five Hundred Ninety Dollars (\$370,590) and shall only be used for the design and replacement of on- and off-site infrastructure improvements. The annual percentage rate shall be at the rate of zero percent (0%) from the date of initial advance by the City until completion of construction of the Development, as evidenced by the issuance of the certificate of occupancy for the Development (the "Conversion Date"), and thereafter, shall bear simple interest at the rate of three percent (3%) per annum until repaid. Each monthly draw request of funds shall be made by the Partnership to the City. Said request shall include copies of paid invoices to substantiate each line item requested. The City shall provide funds for all expenses incurred each month, up to a cumulative total of Three Hundred Seventy Thousand Five Hundred Ninety Dollars (\$370,590,).

The CDBG Loan's term shall be forty (40) years following the Conversion Date, with payments deferred until the Net Cash Flow (as defined in the CLCA) of the Project shall provide for payments to begin. The annual principal and interest, if any, payments shall be made by the 1st of the sixth month following the conclusion of each fiscal year of the Project.

Partnership shall have the right to prepay the CDBG Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest, if any, accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest, if any, and then to principal. Any such prepayment shall have no effect upon Partnership's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the CDBG Note shall be due and payable upon the transfer of the Property absent the prior written consent of City of all or any part of or interest in the Property except as otherwise permitted pursuant to this Loan Agreement or the CLCA.

Notwithstanding any provision of this Loan Agreement or any document evidencing or securing this CDBG Loan, Partnership, and Partnership's principals, partners, members, agents, officers, and successors in interest shall not be personally liable for the payment of the CDBG Loan or any obligation of the CDBG Loan.

ARTICLE II. OPERATION OF THE PROJECT

SECTION 2.01. Acceptance of Obligations. In consideration of the Loan to be provided hereunder, Partnership agrees to and accepts the restrictions, obligations, and conditions contained in this Loan Agreement, including without limitation, the occupancy and rent requirements set forth in Section 2.04 below.

SECTION 2.02. Development and Operation of Project. Partnership shall maintain the Property for rental housing in accordance with this Loan Agreement, and all other applicable legal requirements. Partnership shall at all times maintain in full force and effect all applicable licenses required by the City of Merced, the County of Merced, and/or the State of California to operate and manage the property.

SECTION 2.03 CDBG Requirements. Partnership shall comply with all applicable laws and regulations governing the use of the CDBG Program funds including, but not limited to, the terms and conditions of the Standard Agreement, all applicable regulations contained in 24 CFR Part 92, and applicable requirements and conditions referenced on Exhibit D – "Special Requirements of the CDBG Investment Partnership Program" attached hereto and incorporated herein by reference.

In the event HUD formally amends, waives or repeals any HUD administrative regulation previously applicable to Partnership's performance under this Loan Agreement, the City expressly reserves the right upon giving notice to HUD and Partnership, to require performance of Partnership as though the regulation was not amended, waived, or repealed subject only to the written and binding direction or instruction from HUD.

SECTION 2.04. Occupancy and Rent Requirements.

A. Occupancy Requirement. During the term of this Loan Agreement, Partnership agrees to rent the property only to tenants whose income meet the requirements contained in 24 CFR Section 92.252. This provision shall operate as a deed restriction during the term of this Loan Agreement.

B. Rent Requirement. Initial rent shall be established in accordance with 24 CFR 92.252 and any increases shall not exceed the permitted rent under 24 CFR 92.252.

C. Records Relating to Occupancy and Rental Requirements. Partnership shall maintain all documents used in determining the qualifications of occupants, complete records of rent and other charges billed to and received from all occupants, and such

other documents and reports as are necessary to enable the City, as recipient of CDBG Program funds, to meet the recording requirements of 24 CFR Part 92, sub part K 92.508. The records and documents described in the preceding sentence shall be maintained for the periods and in the manner set forth in Section 2.06 below. The City shall have the right to review and audit such documents and records for compliance with requirements of this Section.

D. Noncompliance with Rent Restrictions; Return of Funds. If the maximum rent authorized to be charged by 24 CFR 92.252 is exceeded for the period specified by 24 CFR 92.252, the grant funds loaned hereunder to Partnership shall be returned to City pursuant to 24 CFR 92.504(c)(3)(ii).

SECTION 2.05. Corporate Status. At all times during the term of this Loan Agreement, Partnership shall maintain its existence and shall comply with all provisions of the California Law (Corporations Code Section 5000 *et. seq.*)

SECTION 2.06. Records and Audits.

A. Maintenance of Records. Partnership shall maintain records including, but not limited to, books, financial records, supporting documents, statistical records, and all other pertinent records sufficient to accurately reflect all expenditures under this Loan Agreement, and all other matters covered by this Loan Agreement pursuant to 24 CFR 92.

Partnership shall preserve and make available its records relating to receipt and use of CDBG Loan proceeds until the expiration of seven (7) years from the date of final disbursement of CDBG grant proceeds to the City, or for such longer period, if any, as required by law.

B. Annual Audit. Each year in which CDBG Loan proceeds are received or expended, Partnership shall cause to be prepared an independent fiscal audit conducted in accordance with generally accepted auditing principles, which audit shall identify the CDBG Loan proceeds received and expended.

Upon completion, Partnership shall provide the City with a copy of each annual independent fiscal audit.

C. Examination of Records and Facilities. Any time during normal business hours, and as often as may be deemed necessary, the Partnership agrees that HUD or the City or any duly authorized employee or representative, shall have access to and the right to examine Partnership's offices or facilities engaged in performance of this Loan Agreement, and all the Partnership's records with respect to all matters covered by this Loan Agreement.

SECTION 2.07. Insurance. Partnership shall maintain, throughout the term of this Loan Agreement, insurance from companies admitted in California, and approved by the City, in amounts as follows:

A. Workers' Compensation Insurance, including Employers' Liability coverage, with limits not less than required by California law.

B. Comprehensive General Liability Insurance with limits of not less than \$1,000,000 for each occurrence combined single limit bodily injury and property damage, including coverage for contractual liability.

C. Property Insurance covering the Property in a form appropriate for the nature of this Property covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with a deductible, if any, acceptable to the City, naming City as loss payee as its interest may appear.

D. The General Liability Insurance provided hereunder shall name the City as an additional insured and all insurance shall provide the City with thirty (30) days written notice of any cancellation.

ARTICLE III. DEFAULT, ENFORCEMENT, AND REMEDIES

SECTION 3.01. Default. Failure by either party to timely perform any material term or provision of this Loan Agreement (including, without limitation, failure by Partnership to comply with the occupancy and rent requirements of Section 2.04 above), shall be considered a Default by that party under this Loan Agreement. The nondefaulting party shall serve written notice of a Default, other than the failure to make a payment on the Energy Efficiency Note, upon the defaulting party. If such Default is not cured by the defaulting party within thirty (30) calendar days after service of the notice of default, the defaulting party shall be liable to the other party for any damages caused by such Default; provided, however, that if the cure cannot be effectuated within such thirty (30) day period, the defaulting party shall have a reasonable additional time period to effectuate such cure so long as it commences such cure within the initial 30 day period, but in no event shall such cure period exceed ninety (90) calendar days after service of the notice of default; and provided, however, the nondefaulting party may, at its sole and complete discretion, waive any damage from the defaulting party by written notice to the defaulting party.

SECTION 4.01 Notices. Any notice, tender, or delivery to be given hereunder by either party to the other may be effected in writing either by personal delivery or sent by first class mail through the United States Postal Service, addressed as set forth below. Either party may change its address by written notice in accordance with this section.

TO CITY: City of Merced
Attention: Housing Division & City Clerk
678 West 18th Street
Merced, CA 95340

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

WITH A COPY TO: City Attorney's Office
City of Merced
678 West 18th Street
Merced, CA 95340

SECTION 4.02 Assignment. Partnership acknowledges and agrees that the Loan is being provided in consideration of its special expertise, skill, and ability of Partnership to operate and maintain the Property in a manner that will achieve the City's objective to provide quality affordable housing for lower income households. Consequently, Partnership shall not permit any voluntary transfer, assignment, or encumbrance of this Loan Agreement without first obtaining the City's written consent, which shall not be unreasonably withheld. Any transfer, assignment, encumbrance, or lease without the City's consent shall be voidable and, at the City's sole discretion, shall constitute a material breach of this Loan Agreement.

SECTION 4.03 Non-Discrimination. In addition to observing any other CDBG requirements relating to non-discrimination, such as 24 CFR 92.350, Partnership shall assure, in connection with the performance of this Loan Agreement, that no person shall be subject to discrimination because of race, religion, ethnic background, sex, sexual preference, or disability.

SECTION 4.04 No Third Party Beneficiaries. Nothing contained in this Loan Agreement shall be construed as creating a relationship of employer and employee or principal and agent between the City and Partnership or Partnership's agents or employees. Nothing contained in this Loan Agreement shall create or justify any claim against City by any third person with whom Partnership may have employed or contracted.

SECTION 4.05 Indemnification. As a separate and independent covenant and irrespective of any insurance coverage, Partnership shall take all responsibility for its performance, and shall bear all losses and damage directly resulting to it, and for performance of any of its contractors, subcontractors or agents.

Partnership agrees to defend with counsel selected by the City, protect, indemnify, and hold harmless the City, its officers, employees, representative, and agents, on account of any act, error, or omission of Partnership in the performance of this Loan Agreement.

Partnership agrees to indemnify, protect, to assume the defense of with counsel selected by the City, and to hold harmless the City, its officers, employees, and agents from every claim, loss, damage, injury, expense, including attorney's fees, judgment, and direct or vicarious liability of every kind, nature, and description arising in whole or in part from the performance of this Loan Agreement.

SECTION 4.06 Covenant Running With Land. The provisions of this Loan Agreement shall constitute covenants which shall run with the land and be binding upon Partnership and Partnership's successors and assigns, and all parties having or acquiring any right, title, interest in whatever form, including, but not limited to, leasehold interests, in and to any part of the Property except that, subject to the Regulatory Agreement and if specifically referenced herein, the same shall terminate and become void forty (40) years from the date of execution of this Loan Agreement. Any attempt to transfer title or any interest therein in violation of these covenants, except as herein provided, shall be void.

SECTION 4.07 Term. The term of this Loan Agreement shall commence upon the date of this Loan Agreement and shall continue for forty (40) years from the Conversion Date unless earlier terminated by the parties hereto. Upon termination or expiration of hereof, Partnership shall transfer any CDBG funds on hand and any accounts receivables attributable to the use of CDBG funds to the City.

SECTION 4.08 Entire Agreement. This Loan Agreement constitutes the entire Agreement between the City and Partnership with respect to the subject matter hereof.

SECTION 4.09 Amendments. The City and Partnership reserve the right to amend this Loan Agreement by mutual consent. It is understood and agreed that no alteration or variation of the terms of this Loan Agreement shall be valid unless made in writing and signed by the parties, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms of this Loan Agreement shall be binding on either of the parties, unless made in writing and signed by both of the parties.

SECTION 4.10 Severability. The invalidity of any clause, part, or provision of this Loan Agreement shall not effect the validity of the remaining portions thereof.

SECTION 4.11 Exhibits. The following referenced exhibits are attached to this Loan Agreement and are incorporated in this Loan Agreement as though fully set forth herein.

- Exhibit A: Legal Description of Property
- Exhibit B: Project Budget
- Exhibit C: City Loan Commitment Agreement
- Exhibit D: Scope of Development
- Exhibit E: Special Requirements of CDBG Investment Partnership Program

SECTION 4.12 Venue. This Loan 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 Loan Agreement shall be held exclusively in a state court in the County of Merced.

SECTION 4.13. Other Program Requirements. Partnership is required by this Loan Agreement to carry out each activity in compliance with all federal laws and regulations described in Subpart H of 24 CFR 92, except that Partnership does not assume the City's responsibility for environmental review in Section 92.352 or the intergovernmental review process in Section 92.357. Neither City nor Partnership may have an officer or employee occupy the Property in violation of 24 CFR 356(f) as required by 24 CFR 504(c)(v)(E). The Property shall, after construction and for the term of this Loan Agreement, meet the property standards set forth in 24 CFR 92.251.

SECTION 4.13 Affirmative Marketing. Partnership must comply with the City's affirmative marketing procedures and requirements adopted in accordance with 24 CFR Section 92.351.

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

CITY OF MERCED
A California Charter
Municipal Corporation

BY: [Signature]
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: [Signature]
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: [Signature] 5-16-2018
City Attorney Date

300626 PO#: 127486
ACCOUNT DATA:

BY: [Signature]
Verified by Finance Officer

Funds Available. uncl 6/29/18

018-1301-552-29-00 117050

\$ 370,590.00 FL 7/13/18

ML#14337 DL 7/12/18

ML#255516 RJ 7/16/18



MERCED GATEWAY INVESTORS
II, LP,
A California Limited Partnership

By: Merced Gateway Investors II,
LP, a California Limited
Partnership

Its: Agency for Service of Process

By: Christina Alley
Christina Alley

TELEPHONE: (209) 388-0782

FAX: (209) 385-3770

E-MAIL: Chris@centralvalleycoalition.com

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

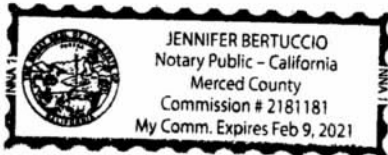
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
 } ss
County of Merced }

On May 24, 2018 before me, Jennifer Bertuccio, Notary Public, personally appeared Christina Alley, 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.



Jennifer Bertuccio
Notary Public

My Commission Expires:
February 9, 2021

CALIFORNIA ALL-PURPOSE 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 Merced

On August 6, 2018, before me, Dawn Mendonca, Notary Public,
(insert name and title of the officer)

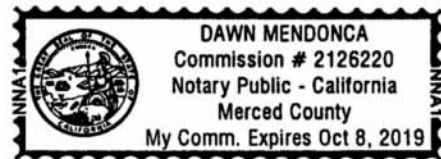
Personally appeared Steven Careigan

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 Dawn Mendonca (Seal)



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)

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

Development Budget
Gateway Terrace II

Gateway Terrace II

		PERMANENT SOURCES								
		TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Tax Credit Equity	Perm Loan	City HOME/CHDO	CVCAH Loan	City of Merced	30% PVC for Fed Subsidized NC / Rehab
LAND COST/ACQUISITION										
Land Cost or Value		1	1				1			0
Demolition		0	0							XXXXXXXXXX
Legal		0		0						XXXXXXXXXX
Total Land Cost or Value		1	1	0	0	0	1	0	0	XXXXXXXXXX
NEW CONSTRUCTION										
Existing Improvements Value		0	0							0
Off-Site Improvements		600,000	600,000				500,000			600,000
Total Acquisition Cost		600,000	600,000	0	0	0	500,000	0	0	XXXXXXXXXX
NEW CONSTRUCTION										
Site Work		430,000	430,000		430,000					430,000
Structures		5,180,000	5,180,000		776,549	4,403,451			500,000	5,180,000
General Requirements		248,400	248,400		248,400					248,400
Contractor Overhead		248,400	248,400		248,400					248,400
Contractor Profit		372,600	372,600		372,600					372,600
Total New Construction Costs		6,479,400	6,479,400	0	2,075,949	4,403,451	0	0	500,000	6,479,400
ARCHITECTURAL FEES										
Architectural		110,000	110,000				110,000			110,000
Survey & Engineering		85,000	85,000		85,000					85,000
Total Arch. & Engr. Costs		195,000	195,000	0	85,000	0	110,000	0	0	195,000
CONST. INTEREST & FEES										
Const. Loan Interest		213,525	213,525		213,525					71,763
Origination Fee		73,000	73,000		73,000					73,000
Lender Fees/Rate Lock Fees		3,500	3,500		3,500					1,050
Taxes		0								
Insurance		5,000	5,000				5,000			2,500
Title & Recording		129,334	129,334				120,596			109,334
CSCDA / Trustee Fees		45,000	45,000				45,000			9,000
CDLAC / CDIAC Fees		78,225	78,225				78,375			
Total Const. Interest & Fees		551,234	551,234	0	290,025	0	252,721	0	0	266,646
PERMANENT FINANCING										
Loan Origination Fee		22,017	22,017		22,017					XXXXXXXXXX
Perm Title & Recording		0	0		0					XXXXXXXXXX
Bond Counsel		60,000	60,000		60,000					XXXXXXXXXX
Total Perm. Financing Costs		82,017	82,017	0	82,017	0	0	0	0	XXXXXXXXXX

Note: Syndication Costs may not be included as a project cost. * Operating Reserve is required - Regulation Section 10327(c)(8)(C).

LEGAL FEES		TOTAL PROJECT COST	RESIDENTIAL COST	COMMERCIAL COST	Tax Credit Equity	Perm Loan	City HOME/CHDO	CVCAH Loan	City of Merced	30% PVC for Fed Subsidized NC / Rehab
Lender Legal Pd. by Applicant	100,000	100,000	100,000		100,000					40,000
Borrower Attorney Other (Specify)	80,000	80,000	80,000		80,000					40,000
Total Attorney Costs	180,000	180,000	180,000	0	180,000	0	0	0	0	80,000

RESERVES		Rent Reserves	0	0	0					XXXXXXXXXX
		Capitalized Rent Reserves	0							XXXXXXXXXX
		* 6-Month Operating Reserve	251,633	251,633	251,633					XXXXXXXXXX
		Total Reserve Costs	251,633	251,633	251,633	0	0	0	0	XXXXXXXXXX

TOTAL CONSTRUCTION CONTINGENCY COSTS	353,970	353,970	0	0	353,970	0	0	0	0	353,970
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OTHER		TCAC App/Allocation /Monitor Fees	26,424	26,424	26,424					XXXXXXXXXX
		3rd Party Reports	81,456	81,456	81,456					81,456
		Local Dev. Impact Fees	552,858	552,858	552,858				0	552,858
		Permit Processing Fees	166,131	166,131	166,131					166,131
		Soft Cost Contingency	100,000	100,000	100,000					100,000
		Marketing	26,175	26,175	26,175					XXXXXX
		Furnishings	60,000	60,000	60,000					XXXXXX
		Non-Profit Start Up Fees	25,000	25,000	25,000					XXXXXX
		Cons Audit Other (Specify)	25,000	25,000	25,000					XXXXXX
		Total Other Costs	1,063,045	1,063,045	1,063,045	0	0	0	0	972,945

Subtotals	9,756,300	9,756,300	0	4,381,639	4,403,451	862,722	0	500,000	8,947,962
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DEVELOPER COSTS		Developer Overhead/Profit	1,342,194	1,342,194		1,068,798	66,131	0	1,342,194
		Other (specify)	0		75,622				
		Other (specify)	0						
		Other (specify)	0						
		Other (specify)	0						
		Other (specify)	0						
		Other (specify)	0						
		Other (specify)	0						
		Total Developer Costs	1,342,194	1,342,194	75,622	1,068,798	66,131	0	1,342,194

TOTAL PROJECT COSTS	11,098,494	11,098,494	0	4,457,261	4,403,451	1,931,520	66,131	500,000	10,290,156
				4,009,148	4,403,451	1,014,410	66,131	734,765	10,290,156

Note: Syndication Costs may not be included as a project cost. * Operating Reserve is required - Regulation Section 10327(c)(8)(C).

Exhibit C

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 as 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.

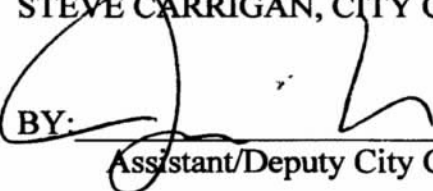
10. This Agreement supersedes and replaces any and all prior Loan Commitment Agreements regarding the Gateway Terrace II project, including, but not limited to the prior Loan Commitment Agreement between the City of Merced and Central Valley Coalition for Affordable Housing dated August 15, 2016.

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 Ditz
Verified by Finance Officer

Funds available. rec 7/19/17

018-1301-552-29.00
\$ 370,590.00

033-1349-552-29.00
\$ 1,014,410.00

v-17839
re 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: Christa@CentralValleycoalition.com

Exhibit D

Construction and Design Description Gateway Terrace II Apartments

Overview

Gateway Terrace II Apartments consists of 50 units of new construction multi-family housing on an approximately 1.65 acre site. It is located on K Street between 12th and 13th Streets in the City of Merced, County of Merced, APN #031-323-002. The Housing Authority of the County of Merced previously owned and operated rental public housing units on this site, which were demolished in 2009. The site has been graded and is ready for new construction. Our target population is existing and future income qualified families in Merced and the surrounding areas. 100% of the units will be rent restricted for qualified residents with incomes ranging from 50% to 60% of the area median income for a 55-year affordability period. We are also anticipating eleven (11) HUD-Veterans Affairs Supportive Housing (HUD-VASH) vouchers and thirty-eight (38) HUD Project Based Vouchers (PBVs) committed to the project.

Gateway Terrace II Apartments will consist of 49 affordable units and 1 manager unit for a total of 50 garden style apartments with 5 units at 50% of AMI and 44 units at 60% of AMI. The project will consist of 12 one bedroom units, 20 two bedroom units and 18 three bedroom units.

Unit Type	# of units	Sq. Ft. (approx.)
1BD/1BA – 50%	1	607
1BD/1BA – 60%	11	607
2BD/1BA – 50%	2	803
2BD/1BA – 60%	17	803
3BD/2BA – 50%	2	1,137
3BD/2BA – 60%	16	1,137
2BD/1BA – MGR	1	
TOTALS	50	

Construction Design:

All of the units will incorporate universal design elements, which include: no step entries, minimum 34" doorways and passage ways, accessible bathrooms with reinforcements for grab bars, hallway widths of at least 42" and levered door handles and faucets. In addition, all first floor units will also be fully accessible and adaptable for those individuals requiring adjustments in their units for certain circumstances. Within each unit, residents will benefit from standard features such as Energy Star® rated refrigerators and dishwashers, exhaust fans, sink disposals, ranges with ovens and generous counter, cabinet and storage space throughout the unit.

The buildings are proposed to be designed as two-story structures constructed of wood frames supported by concrete slabs and perimeter foundations. Exterior finishes are proposed to be a

variety of materials using durable and environmentally friendly building materials in a variety of colors throughout the development. All aspects of building construction will comply with quality construction standards to ensure longevity and safety of these high quality structures

- Two-story (no elevator) garden style apartments
- Stucco and sided exteriors applied over type V wood constructed buildings
- Tile roofing
- Six (6) residential buildings and one community building with laundry on site
- Fully landscaped
- Complies with Section 504

Offsite Improvements

Gateway Terrace II Apartments will include curb, gutter, sidewalk and street improvements as well as improving the water and sewer main lines to serve the development.

Site Amenities:

The community building will be centrally located on the site. It will provide both casual seating and group seating along with a kitchen facility. The main activity space will be equipped with a TV, Stereo and DVD player. The building will also provide a laundry area with washers and dryers. The community center will be decorated and furnished for the residents. The outdoor recreation area will provide seating, tables, and a BBQ area.

- Restroom facilities
- Activity room
- Barbecue areas
- Laundry facility
- Computer lab
- Big screen TV with DVD Player
- Full service kitchen
- Manager office space

Unit Amenities:

- Carpeted living areas
- Tile or vinyl flooring in Entries, Kitchens and Baths
- Window coverings
- Individual Thermostatic Temperature controlled heating & Air conditioning
- Refrigerator
- Built-in dishwasher
- Built-in range with hood
- Sink with garbage disposal
- Plenty of cabinet space
- Patios and decks with extra storage area

Unique Site Features

We are not aware of any unique site features that may increase project costs or require environmental mitigation.

Development Plan and Neighborhood Impacts

The Gateway Terrace II Apartment project is an allowed use within the City of Merced's General Plan guidelines and zoning requirements and conforms to the adjacent land uses and creates no negative impact on the surrounding neighborhood.

Gateway Terrace II Apartments will replace a former public housing site which will allow the same families to have the opportunity to move back to the neighborhood. The site is located within walking distance to many community services and amenities. The Housing Authority's learning center is located within a mile and provides many learning and career opportunities.

Adjacent Land Uses

To the north side of the site is Highway 99. To the east of the site there are single family homes and multifamily homes. To the southwest of the site is Tenaya Middle School and McNamara Park which is open to the general public for use. To the south of the site there are multifamily homes.

Proximity to Services

Below is a list of services and the distance from the site that the residents of Gateway Terrace II Apartments will have access to use:

- Route M4 Bus Stop - 0.3 miles
- McNamara Park – 0.1 miles
- Bob Hart Park – 0.3 miles
- Smart & Final – 0.2 miles
- Tenaya Intermediate School – 0.4 miles
- Merced Drug (pharmacy) – 0.5 miles
- John O'Banion Learning Center 0.7 miles
- Gettysburg Medical Clinic – 0.4 miles
- Mercy Medical Center – 0.6 miles
- Merced Police Department – 0.1 miles
- Merced County Office of Education 0.2 miles

<u>Action</u>	<u>Date</u>
1. DEVELOPER SUBMISSION OF THE BASIC CONCEPT DRAWINGS. The Developer shall prepare and submit to the City for approval, the Basic Concept Drawings and related documents for development of the site.	Within five (5) days after execution of this Agreement by the City.
2. APPROVAL OF BASIC CONCEPT DRAWING. The City Housing Division shall approve or disapprove the Basic Concept Drawings or any revisions thereto.	Within ten (10) days after receipt by the Housing Division.
3. APPLICATION FOR DESIGN REVIEW. Developer shall submit application to the City of Merced for Final Review of the development of the entire site.	Within ten (10) days of approval of Basic Concept Drawings by the City.
4. DEVELOPER SUBMISSION; GATEWAY TERRACE FINAL CONSTRUCTION DRAWINGS AND APPLICATION FOR BUILDING PERMIT. The Developer shall prepare and submit to the City Final Construction Drawings and Specifications and Final Landscaping Plan for the Gateway Terrace, and shall submit application for building permit.	Within one hundred twenty (120) days after the approval of Basic Concept Drawings by the City Housing Division.
5. APPROVAL; FINAL CONSTRUCTION DRAWINGS. The City Housing Division shall approve or disapprove the Final Construction Drawings and Specifications and Final Landscaping Plan for the Gateway Terrace.	Within ten (10) days after receipt by the City Housing Division.
6. DEVELOPER SUBMISSION; AGREEMENTS WITH SUBDEVELOPERS, CO-DEVELOPERS AND OPERATORS. Developer shall deliver to Housing Division (1) the Gateway Terrace Management Agreement with the Complex Operator, (2) the Limited Partnership Corporation papers of the entity owning the Complex.	Within ninety (90) days of the City Housing Division Approval of this Agreement.

<p>7. COMMENCEMENT OF DEVELOPMENT: Developer shall commence construction of improvements on the site as evidenced by commencement of grading activities.</p>	<p>Within thirty (30) days after the closing of the Construction Loan.</p>
<p>8. COMPLETION OF DEVELOPERS IMPROVEMENTS, GATEWAY TERRACE: The Developer shall complete construction of Improvements on the Site as evidenced by the Certificate of Completion.</p>	<p>Within four hundred fifty (450) days of commencement of construction.</p>

Exhibit E: Special Requirements of CDBG Investment Partnership Program

Special Requirements of CDBG Investment Partnership Program

The State of California Department of Housing and Community Development, CDBG Contract Management Manual, dated April 2006, as amended from time to time, contains relevant requirements for recipients of CDBG Program funds, and is hereby incorporated into the Regulatory Agreement.

City of Merced
Contract/Agreement Transmittal Form

*Please Note: The City Clerk's Office will keep **one original** for the City's files.
All other originals will be returned to the department, unless specific instructions for distribution are attached.*

Date Submitted: 5/30/2018 Council Approval Needed? Yes ☒ No ☐
Department: Housing Division Council Meeting Date: 06/04/2018
Contact Name/Ext.: Mark Hamilton / x8989 (If Council approval is required, please
attach a copy of your Admin. Report.)
Department Head Signature: _____

Contract Information (If expediting needed, please provide a brief explanation below as to why.)

SPECIAL HANDLING: CONFIDENTIAL ☐ RUSH ☐ OTHER ☐ DATE NEEDED BY: _____

Reason: _____

☒ New Contract

☐ Modification - Amendment #: _____ Change Order #: _____ **Original** Contract Date: _____

Purpose of Contract: Gateway Terrace II - CDBG - Note

Contract Effective Date: 6/4/2018 Contract Expiration Date: _____

Contractor/Vendor Information

Name: Merced Gateway Investors II, LP Business License #: _____
E-Mail: chris@centralvalleycoalition.com Misc. Receivable Acct. #: _____

Budget Information

Funds Available in Budget? (Select one)

- ☒ Yes - Account #: 018-1301-552-29.00 / PO#127486
☐ No - Attach a copy of Budget Transfer Form or the Administrative Report appropriating funds
☐ Does not require funds

Amount of Contract: \$ 370,590 Amount of Amendment: \$ _____

Required Attachments (as applicable) (If available, please include when submitting contract paperwork.)

☐ Certificate of Insurance ☐ Labor & Material Bond ☐ Warranty Bond
☐ W-9 (or substitution) ☐ Faithful Performance Bond ☐ Administrative Report

CITY CLERK DEPARTMENT TO COMPLETE

- ✓ Enter into database(s)
- ✓ Contract cover sheet with contract # for Finance
- ✓ Finance Dept. signature and funds verification
- ✓ Council approval verification (if applicable)
- ✓ City Manager or designee signature
- ✓ Clerk's attestation with City seal
- ✓ Image contract and file original
- ✓ E-mail to Contractor/Vendor

CONTRACTING DEPARTMENT TO COMPLETE

- ✓ W-9 and/or insurance certificate(s)
- ✓ Applicable bonds/insurance carrier ratings
- ✓ Contractor/Vendor signature(s)
- ✓ Attorney's Office review/approval as to form
- ✓ Mail/deliver original to Contractor/Vendor

SUBMITTING DEPARTMENT TO COMPLETE ALL INFORMATION

**CITY OF MERCED
NOTE**

(Gateway Terrace Apartment II Project—CDBG Loan)

\$370,590

Merced, California

JUNE 4, 2018

FOR VALUE RECEIVED, Merced Gateway Investors II, LP, a California Limited Partnership (“Borrower”), promises to pay to the City of Merced, a California Charter Municipal Corporation (the “City”), or order, the principal sum of Three Hundred Seventy Thousand Five Hundred Ninety Dollars (\$370,590), or so much thereof as may be advanced by the City to or on behalf of the Borrower pursuant to a Deed Restriction Covenant and Loan Agreement dated JUNE 4, 2018 (the “CDBG Loan Agreement”), by and between the Borrower and the City (B-17-MC-06-0044 under the Community Development and Block Grant (CDBG) and administered by the U.S. Department of Housing and Urban Development (“HUD”) (14.218-Entitlement Grant) with a Federal Award Date of September 22, 2017), together with interest thereon as specified herein (the “CDBG Loan Agreement”). The obligation of the Borrower in respect of all such advances is subject to the terms of (a) a City Loan Commitment Agreement dated as of July 17, 2017 (the “CLCA”), between the City of Merced (the “City”) and the Borrower, (b) Agreement Contains Covenants Affecting Real Property between the Borrower and the City dated JUNE 4, 2018 (the “CDBG Regulatory Agreement”), (c) this CDBG Note, (d) the Deed of Trust and Security Agreement of even date hereof, securing this CDBG Note, recorded in the Official Records of the County Recorder of Merced County, California (the “CDBG Deed of Trust”), and (e) the CDBG Loan Agreement, which together with all other loan related documents and instruments required by the City are collectively referred to as the “CDBG Loan Documents.”

1. Borrower’s Obligation. This promissory note (the “CDBG Note”) evidences the Borrower’s obligation to pay the City the principal amount of Three Hundred Seventy Thousand Five Hundred Ninety Dollars (\$370,590) for the funds advanced to the Borrower by City to refinance the development of the Property (the “Development”) for the purposes and pursuant to the terms set forth in the CLCA. Borrower shall submit monthly draw requests, up to a cumulative total of \$370,590. All capitalized terms not otherwise defined in this CDBG Note shall have the meanings set forth in the CLCA.

2. Interest. The outstanding principal balance of this CDBG Note shall bear simple interest at the rate of zero percent (0%) from the date of initial advance by the City until completion of construction of the Development, as evidenced by the issuance of the certificate of occupancy for the Development (the "Conversion Date"), and thereafter, shall bear simple interest at the rate of three percent (3%) per annum until repaid; provided, however, if a Default occurs, interest on the principal balance shall begin to accrue, as of the date of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of seven percent (7%), compounded annually, or the highest rate permitted by law.

3. Term and Repayment Requirements. The term of this CDBG Note (the "Term"), shall commence with the date of this CDBG Note and shall expire on the date that is forty (40) years following the Conversion Date. This CDBG Note shall be due and payable as set forth in the CLCA. Payments shall be paid annually in arrears, no later than June 1 of each year with respect to the previous calendar year, with payments deferred until the Net Cash Flow (as defined in the CLCA) of the Project provide that payments should begin and in the priority as described in the CLCA.

Borrower shall have the right to prepay this CDBG Note in whole or in part without penalty.

Unless otherwise specified hereinabove, each payment shall be credited first on interest (if any) then due and the remainder on principal; and interest shall thereupon cease upon the principal so credited.

4. No Assumption. This CDBG Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City, or as set forth in the CDBG Loan Agreement and CDBG Regulatory Agreement.

5. Security. This CDBG Note is secured by the CDBG Deed of Trust, wherein the Borrower is the Trustor and the City is the Beneficiary, covering the Property.

6. Terms of Payment.

(a) All payments due under this CDBG Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this CDBG Note shall be paid to City at the office of the City, 678 West 18th Street, Merced, CA 95340, Attn: Housing Division & City Clerk, or to such other place as the City may from time to time designate in writing.

(c) All payments on this CDBG Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses, including reconveyance fees and reasonable attorney's fees of the City, incurred in connection with the payment of this CDBG Note and the release of any security hereof.

(d) Notwithstanding any other provision of this CDBG Note, or any instrument securing the obligations of the Borrower under this CDBG Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this CDBG Note would result in the payment of interest which would exceed the amount that the City may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this CDBG Note, so that in no event shall the Borrower be obligated under the terms of this CDBG Note to pay any interest which would exceed the lawful rate.

(e) This CDBG Note shall be nonrecourse to Borrower and its partners.

7. Default.

(a) Any of the following shall constitute an Event of Default under this CDBG Note:

(i) Any failure to pay, in full, any regularly scheduled payment required under this CDBG Note when due following written notice by City of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by the Borrower of any terms, condition, provision or covenant set forth in this CDBG Note subject to the notice and cure period set forth in the CLCA; and

(iii) The occurrence of any Event of Default under the CDBG Loan Agreement, the CDBG Deed of Trust, or the CDBG Regulatory Agreement, or other instrument securing the obligations of the Borrower under this CDBG Note or under any other promissory notes hereafter issued by the Borrower to the City pursuant to the CDBG Loan Agreement or the CDBG Deed of Trust, subject to notice and cure period, if any, set forth therein.

Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by one or more of Borrower's limited partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent to Borrower hereunder shall also be sent to Merced Gateway Investors II, LP, a California Limited Partnership, 3351 "M" Street, Suite #100, Merced, California 95348, Attention: Christina Alley.

(b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, if any, and together with all other sums then payable under this CDBG Note and CDBG Deed of Trust shall, at the option of the City, become due and payable in full, without further demand.

(c) The failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand and notice of protest, notice of demand, and notice of dishonor of this CDBG Note. The Borrower expressly agrees that this CDBG Note or any payment hereunder may be extended from time to time and that the City may accept further security or release any security for this CDBG Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this CDBG Note or any installment hereof made by agreement by the City with any person now or hereafter liable for payment of this CDBG Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this CDBG Note, either in whole or in part.

(c) The obligations of the Borrower under this CDBG Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this CDBG Note for any reason whatsoever.

9. Miscellaneous Provisions.

(a) All notices to the City or the Borrower shall be given in the manner and at the addresses set forth in the CDBG Loan Agreement, or to such addresses as the City and the Borrower may hereinafter designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the City in the enforcement of the provision of this CDBG Note, regardless of whether suit is filed to seek enforcement.

(c) This CDBG Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This CDBG Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the CDBG Loan Documents, contains the entire agreement between the parties as to the CDBG Loan. It may not be modified except upon written consent of the parties.

MERCED GATEWAY INVESTORS
II, LP,
A California Limited Partnership

By: Merced Gateway Investors LP, a
California Limited Partnership

By: Christina Alley
Christina Alley

ADDRESS: 3351 "M" Street,
Suite 100
Merced, CA 95348

TELEPHONE: (209) 388-0782

FAX: (209) 385-3770

E-MAIL: chris@centralvalleycoalition.com

APPROVED AS TO FORM:

[Signature]

300624
FUNDS/ACCOUNTS VERIFIED

[Signature]
FINANCE OFFICE DATE

No funds to encumber. 4/29/18 -6-
27/12/18 FL 7/13/18

City of Merced
Contract/Agreement Transmittal Form

*Please Note: The City Clerk's Office will keep **one original** for the City's files.
All other originals will be returned to the department, unless specific instructions for distribution are attached.*

Date Submitted: 5/30/2018 Council Approval Needed? Yes ☒ No ☐
Department: Housing Division Council Meeting Date: 06/04/2018
Contact Name/Ext.: Mark Hamilton / x8989 (If Council approval is required, please
attach a copy of your Admin. Report.)
Department Head Signature: _____

Contract Information (If expediting needed, please provide a brief explanation below as to why.)

SPECIAL HANDLING: CONFIDENTIAL ☐ RUSH ☐ OTHER ☒ DATE NEEDED BY: _____

Reason: MUST BE SIGNED BY MAYOR & NOTARIZED.

☒ New Contract

☐ Modification - Amendment #: _____ Change Order #: _____ **Original** Contract Date: _____

Purpose of Contract: Gateway Terrace II - CDBG - Notice of Affordability

Contract Effective Date: 6/4/2018 Contract Expiration Date: _____

Contractor/Vendor Information

Name: Merced Gateway Investors II, LP Business License #: _____
E-Mail: chris@centralvalleycoalition.com Misc. Receivable Acct. #: _____

Budget Information

Funds Available in Budget? (Select one)

- ☒ Yes - Account #: 018-1301-552-29.00 / PO#127486
☐ No - Attach a copy of Budget Transfer Form or the Administrative Report appropriating funds
☐ Does not require funds

Amount of Contract: \$ 370,590 Amount of Amendment: \$ _____

Required Attachments (as applicable) (If available, please include when submitting contract paperwork.)

☐ Certificate of Insurance ☐ Labor & Material Bond ☐ Warranty Bond
☐ W-9 (or substitution) ☐ Faithful Performance Bond ☐ Administrative Report

CITY CLERK DEPARTMENT TO COMPLETE

- ✓ Enter into database(s)
- ✓ Contract cover sheet with contract # for Finance
- ✓ Finance Dept. signature and funds verification
- ✓ Council approval verification (if applicable)
- ✓ City Manager or designee signature
- ✓ Clerk's attestation with City seal
- ✓ Image contract and file original
- ✓ E-mail to Contractor/Vendor

CONTRACTING DEPARTMENT TO COMPLETE

- ✓ W-9 and/or insurance certificate(s)
- ✓ Applicable bonds/insurance carrier ratings
- ✓ Contractor/Vendor signature(s)
- ✓ Attorney's Office review/approval as to form
- ✓ Mail/deliver original to Contractor/Vendor

SUBMITTING DEPARTMENT TO COMPLETE ALL INFORMATION

BARBARA J LEVEY

Merced County Clerk - Recorder

P Public

Doc#: **2018026859**

Titles:	1	Pages:	7
Fees		32.00	
Taxes		0.00	
Housing Fee		0.00	
PAID		32.00	

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)

**NOTICE OF AFFORDABILITY RESTRICTIONS ON
TRANSFER OF PROPERTY****RELATING COMMUNITY DEVELOPMENT BLOCK GRANT LOAN**

NOTICE: Restrictions have been recorded restricting the price and terms at which the real property described below in this Notice ("Property") may be sold or rented. These affordability restrictions may limit the sales price or rents of the Property to an amount that is less than the fair market value of such amounts for the Property and limit the persons and households who are permitted to purchase or rent the Property to persons or households with certain income levels.

Recorded Document Containing Affordability Restrictions ("Affordability Restrictions")
recorded (check one):

☐ as document No. _____ official records of
Merced County on _____; or

☒ Regulatory Agreement and Declaration of Restrictive Covenants (the
"Regulatory Agreement") relating to the HOME Investment Partnership Loan,
recorded concurrent with this Notice, official records of Merced County.

Name of Agency: City of Merced**Name of Property Owner:** Merced Gateway Investors II, L.P.**Property Legal Description:** See Attached legal Description**Property Street Address:** 1235 K St. Merced, CA 95341**Property Assessor's Parcel Number:** 031-323-002-000

Affordability Restrictions Summary (check as applicable):

- ☒ The Affordability Restrictions Restrict the amount of rent that may be charged for rental housing units on the Property, as follows:

As such terms are defined in the Regulatory Agreement, Rent charged to tenants of the Very Low-Income Units shall not exceed one-twelfth (1/12) of thirty percent (30%) of fifty percent (50%) of Area Median Income ("AMI"), and for Low-Income Units the rents shall not exceed one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of Area Median Income ("AMI"). Adjusted for Family Size Appropriate for the Units; and Rent charged to tenants of the Moderate Unit shall not exceed one-twelfth (1/12) of thirty percent (30%) of one hundred twenty percent (120%) of AMI, Adjusted for Family Size Appropriate for the Unit. This applies only to the 3 CDBG assisted units.

- ☐ The Affordability Restrictions restrict the sales price that may be charged for sale of one or more housing units on the-Property, as follows: _____

- ☒ The Affordability Restrictions restrict the income level of tenants or purchasers of the Property, as follows:

Thirty-Nine (39) units shall be restricted for occupancy by households with incomes at or below sixty percent (60%) of the AMI; and one (1) manager's unit shall be restricted for occupancy by households with income at or below one hundred twenty percent (120%) of the AMI of which three will be CDBG assisted units.

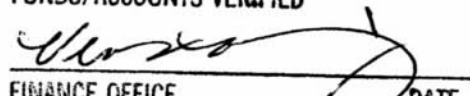
- ☒ The Affordability commence on the date the Notice of Satisfaction of Obligations if filed and terminates after fifty-five (55) years.

This Notice is recorded pursuant to and in compliance with Health and Safety Code Section 33334.3 (f)(3) and (4) and California Government Code Section 27287. This Notice is conjoined with CA AB 382, Chapter 596.

CITY OF MERCED, A California charter
municipal corporation

APPROVED AS TO FORM:


300626
FUNDS/ACCOUNTS VERIFIED


FINANCE OFFICE DATE

No funds to encumber. met 6/29/18
FL 6/29/18

BY:


Mayor

MERCED GATEWAY INVESTORS
II, LP, a California Limited Partnership

By: MERCED GATEWAY
INVESTORS II, LP,
a California Limited Partnership

Its: Agency for Services of Process

By: Christina Alley
Christina Alley

ADDRESS: 3351 "M" Street,
Suite 100
Merced, CA 95348

TELEPHONE: (209) 388-0782

FAX: (209) 385-3770

E-MAIL: Chris@centralvalleycoalition.com

CALIFORNIA ALL-PURPOSE 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 Merced

On August 8, 2018, before me, Dawn Mendonca, Notary Public,
(insert name and title of the officer)

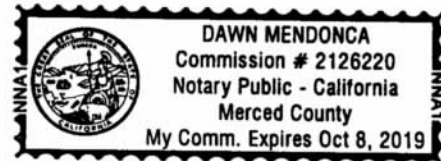
Personally appeared Michael W. Murphy

who proved to me on the basis of satisfactory evidence to be the person ~~(X)~~ whose name ~~(X)~~ is ~~(X)~~ subscribed to the within instrument and acknowledged to me that he ~~(X)~~ she ~~(X)~~ they executed the same in ~~(X)~~ his ~~(X)~~ her ~~(X)~~ their authorized capacity ~~(X)~~ (ies), and that by ~~(X)~~ his ~~(X)~~ her ~~(X)~~ their signature ~~(X)~~ on the instrument the person ~~(X)~~, or the entity upon behalf of which the person ~~(X)~~ 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 Dawn Mendonca (Seal)



CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

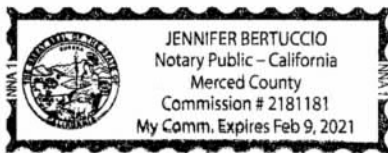
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
 } SS
County of Merced }

On August 29, 2018 before me, Jennifer Bertuccio, Notary Public, personally appeared Christina Alley, 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.



Jennifer Bertuccio
Notary Public

My Commission Expires:
February 9, 2021

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)

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



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

File #: 16-555

Meeting Date: 6/4/2018

Report Prepared by: Mark E. Hamilton, Housing Program Supervisor, Housing Division, Department of Development Services

SUBJECT: Loan Agreements for Gateway Terrace II Apartments Housing Project

REPORT IN BRIEF

Authorizes the City to enter into various loans, subordinations, notes, and deeds of trust necessary to complete the financing of the Gateway Terrace II Housing Project.

RECOMMENDATION

City Council - Adopt a motion:

- A. Adopting **Resolution 2018-34**, a Resolution of the City Council of the City of Merced, California, approving a HOME investment partnerships loan to Merced Gateway Investors II, LP, in the principal amount of \$500,000, approving and authorizing the execution of a loan agreement, regulatory agreement, subordination agreement, and related loan documents, and authorizing certain other actions in connection therewith; and,
- B. Approving the HOME regulatory agreement; and,
- C. Approving the HOME notice of affordability; and,
- D. Approving the HOME deed restriction covenants and loan agreement; and,
- E. Approving the HOME agreement containing covenants affecting real property; and,
- F. Approving the HOME note; and,
- G. Approving the HOME deed of trust and security agreement; and,
- H. Adopting **Resolution 2018-35**, a Resolution of the City Council of the City of Merced, California, approving a Community Housing Development Organization HOME investment partnerships loan to Merced Gateway Investors II, LP, in the principal amount of \$514,410, approving and authorizing the execution of a loan agreement, regulatory agreement, subordination agreement, and related loan documents, and authorizing certain other actions in connection therewith; and,
- I. Approving the CHDO-HOME note; and,

- J. Approving the CHDO-HOME deed of trust and security agreement; and,
- K. Approving the CHDO-HOME deed restriction covenants and loan agreement; and
- L. Approving the CHDO-HOME notice of affordability restrictions; and,
- M. Approving the CHDO-HOME regulatory agreement; and,
- N. Approving the CHDO-HOME agreement containing covenants affecting real property; and,
- O. Adopting **Resolution 2018-36**, a Resolution of the City Council of the City of Merced, California, approving a Community Development Block Grant (CDBG) loan to Merced Gateway Investors II, LP, in the principal amount of \$370,590, approving and authorizing the execution of a loan agreement, regulatory agreement, subordination agreement, and related loan documents, and authorizing certain other actions in connection therewith; and,
- P. Approving the CDBG agreement containing covenants affecting real property; and,
- Q. Approving the CDBG note; and,
- R. Approving the CDBG deed of trust and security agreement; and,
- S. Approving the CDBG deed restrictions covenants and loan agreements; and,
- T. Approving the CDBG notice of affordability; and,
- U. Adopting **Resolution 2018-33**, a Resolution of the City Council of the City of Merced, California, approving the parking agreement with Merced Gateway Investors II regarding use of K Street between 12th Street and 13th Street; and,
- V. Approving the parking agreement; and,
- W. Approving modifications to aforementioned documents as required by the City Attorney's Office to correspond to the City loan commitment agreement with Merced Gateway Investors II, LP and pertinent state and federal grant agreements and guidelines; and,
- X. Authorizing the City Manager or Assistant City Manager to execute, and if necessary, make minor modifications to the agreements and Resolutions as described above as attached to this report and all associated documents.

ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Approve, subject to conditions other than recommended by staff; or,
- 3. Deny; or,
- 4. Refer to the City Manager for reconsideration of specific items (specific items to be addressed in the motion); or,

5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Per Housing Urban Development Department (HUD), a participating jurisdiction is required to designate 15% of its HOME Investment Partnership Program (HOME) funds to a Community Housing Development Organization (CHDO); and, allowable by Community Development Block Grant Program as an eligible activity due to over 51% of the units and designated for Low-Income families and 22% (10 Units) are being reserved for veterans with VASH vouchers.

CITY COUNCIL PRIORITIES

The development is part of the Community's goals as described in the 2015-2020 HUD Consolidated Plan and budgeted in the 2017 HUD Annual Action Plan for the City of Merced.

DISCUSSION

Staff is requesting Council to approve three loans through several loan agreements totaling \$1,385,000. The loans through the City provide partial financial assistance to Merced Gateway Investors II, L.P. (Central Valley Coalition for Affordable Housing) for Merced Gateway Terrace II Development.

The City Council approved the Gateway Terrace II Apartment City Loan Commitment Agreement (CLCA) and loan package on July 19, 2017. The Merced Gateway Terrace II Development is a 50 unit residential complex consisting of one (1) Moderate-Income Unit, thirty-nine (39) Low-Income Units, and ten (10) Units reserved for Veterans with VASH Vouchers.

Of the 50-units in the development, the City is providing financial assistance to the following:

- HOME Investment Partnership Program (HOME) loan would fund 3 (three) of the Low-Income units;
- Community Housing Development Organization (CHDO) loan provides general assistance for the development of low-income rentals funding 4 (four) of the Low-Income units; and,
- Community Development Block Grant loan provides financial assistance to the developer for the on and off-site infrastructure improvements.

In order for the development to be financially feasible, the developer would partner with the local Veteran's Affairs office to provide housing to 10 (ten) veterans.

City Housing is providing a total of \$1,385,000 in Home Investment Partnerships Program (HOME & CHDO) and Community Development Block Grant funds. These funding sources, combined with Sewer and Water Enterprise Funds combined with Federal Tax Credits inject enough capital to allow Gateway Terrace Development to move forward.

The financing contributions are as follows:

Community Development Block Grant:

- \$370,590 - CDBG - FY 2015/16

HOME Investment Partnership Program:

- \$300,000 - HOME - FY Pre-2015
- \$55,000 - HOME - FY 2015/16
- \$145,000 - HOME - FY 2016/17

Community Housing Development Organization / HOME Investment Partnership Program:

- \$150,000 - CHDO (HOME) - FY 2015/16
- \$150,000 - CHDO (HOME) - FY 2016/17
- \$214,410 - CHDO (HOME) - FY 2017/18

Total = \$1,385,000

The City Loan Commitment Agreement (Attachment 3) approved by the City Council on July 19, 2017, provides for a 3% interest rate on each of the loans and indicates repayment will be made by the Project's net cash flow.

When the funding allocations were established in 2017, they were based upon funding availability at that point in time. Since then the funding amounts available from each grant year has varied due to expenditures during the current fiscal year. However, the total amount allocated to fund the development of the project has not changed.

HOME Loan

The HOME Investment Partnership Program (HOME) funds are provided to assist with developing and increasing the amount of Low-Income Housing units available within our community. HOME funds available for this development are from three funding cycles. HOME funds from the Fiscal Year 2017/18 would be returned to HUD if the Loan Documents are not approved. HUD requires all funds must be obligated to a specific activity (Gateway Terrace II) within 24 months of disbursement to a participating jurisdiction. In order for City Housing to provide financial assistance, each loan would require approval by the City Council. Once these loan documents are approved and recorded, construction of this development could begin.

The HOME loan is reflected in the following documents:

- Attachment 9 - HOME - Resolution No. 2018-34
- Attachment 10 - HOME - Regulatory Agreement
- Attachment 11 - HOME - Notice of Affordability
- Attachment 12 - HOME - Deed Restrictions Covenants & Loan Agreement
- Attachment 13 - HOME - Agreement Containing Covenants Affecting Real Property
- Attachment 14 - HOME - Note
- Attachment 15 - HOME - Deed of Trust & Security Agreement

The funding through the California Statewide Communities Development Authority (CSCDA) is

intended to be the first funding for the project. Citibank is CSCDA's lender for this purpose. As a condition of funding, Citibank is requiring that its loan be in the first position and all other loans be in a second or subsequent position. This means that the City's rights to enforce its agreements are subject to consent of Citibank as the Senior Lender. It also means that, should the borrower default on its first loan, the City's loans could not be repaid.

The CHDO Loan

As a Participating Jurisdiction, the City of Merced is required to set aside at least 15% of its HOME funds for use by a Community Housing Development Organization (CHDO). CHDO is a special HUD defined non-profit organization that has, as its mission, the development of affordable housing. The City and the State of California have designated Central Valley Coalition for Affordable Housing as an eligible CHDO.

The City has provided funding to the Central Valley Coalition for Affordable Housing for several years per HUD regulations regarding CHDOs. As a CHDO, funding provided from the City must be used on a low-income housing or multi-family housing project and requires only a note and loan agreement between the City and CHDO.

The CHDO loan is reflected in the following documents:

- Attachment 16 - CHDO - Resolution No. 2018-35
- Attachment 17 - CHDO - Note
- Attachment 18 - CHDO - Deed of Trust & Security Agreement
- Attachment 19 - CHDO - Deed Restrictions Covenants & Loan Agreement
- Attachment 20 - CHDO - Notice of Affordability
- Attachment 21 - CHDO - Regulatory Agreement
- Attachment 22 - CHDO - Agreement Containing Covenants Affecting Real Property

Community Development Block Grant Loan

The Community Development Block Grant Loan commitment of \$370,590 is an allowable activity for this grant. CDBG funds are only allowed to reimburse the on- and off-site infrastructure improvements for the project. Per HUD's Rules and Regulations, CDBG funds are not allowed to fund the construction of new housing units. The Housing Division is only allowed to use CDBG funds within this project due to the necessary infrastructure improvements required.

The CDBG loan is reflected in the following documents:

- Attachment 23 - CDBG - Resolution No. 2018-36
- Attachment 24 - CDBG - Agreement Containing Covenants Affecting Real Property
- Attachment 25 - CDBG - Note
- Attachment 26 - CDBG - Deed of Trust & Security Agreement
- Attachment 27 - CDBG - Deed Restrictions Covenants & Loan Agreement
- Attachment 28 - CDBG - Notice of Affordability

Staff is recommending approval of the loan agreements for the development with the exception of allowing the City Legal Counsel to make adjustments as might be needed to maintain conformity to

the provisions of the City Loan Commitment Agreement (CLCA) and other Grant agreements.

Additionally, in order for the project to serve the clientele and maximize the density of the site, Housing Staff is recommending the approval of the Parking Agreement (Attachments 7 & 8). Housing Staff and the Developer analyzed the parking demands of other affordable housing projects that serve a specialized clientele such as Gateway Terrace II (10 units reserved for Veterans). The analysis determined a demand of less than one parking space is used within similar types of affordable housing projects. The Developer is asking for a reduction of required parking for the development to 51 total parking spaces.

With the project having a total of 50 units, this would provide one space per unit, plus one additional parking space. The property is zoned for High Density Residential (R-4) and permits multi-family dwellings. The project meets the City's General Plan and Housing Element goals to develop quality multi-family projects within the community. Housing Staff does not foresee a parking issue for this project from the reduction as there is ample on-street parking available surrounding the project site on 12th and 13th Streets.

IMPACT ON CITY RESOURCES

The City Council approved the CLCA and loan package on July 19, 2017. The necessary budget actions were made at that time and no adjustments are needed.

ATTACHMENTS

1. Location Map
2. Site Plan
3. City Loan Commitment Agreement
4. Letter Regarding HUD VASH Vouchers
5. Resolution form CVCAH Board
6. Interdepartmental Agreement - Gateway Terrace II
7. Parking Agreement Resolution No. 2018-33
8. Parking Agreement
9. HOME - Resolution No. 2018-34
10. HOME - Regulatory Agreement
11. HOME - Notice of Affordability
12. HOME - Deed Restrictions Covenants & Loan Agreement
13. HOME - Agreement Containing Covenants Affecting Real Property
14. HOME - City of Merced Note
15. HOME - Deed of Trust & Security Agreement
16. CHDO - Resolution No. 2018-35
17. CHDO - City of Merced Note
18. CHDO - Deed of Trust & Security Agreement
19. CHDO - Deed Restrictions Covenants & Loan Agreement
20. CHDO - Notice of Affordability
21. CHDO - Regulatory Agreement
22. CHDO - Agreement Containing Covenants Affecting Real Property
23. CDBG - Resolution No. 2018-36
24. CDBG - Agreement Containing Covenants Affecting Real Property

- 25. CDBG - City of Merced Note
- 26. CDBG - Deed of Trust & Security Agreement
- 27. CDBG - Deed Restrictions Covenants & Loan Agreement
- 28. CDBG - Notice of Affordability

RESOLUTION NO. 2018- 36

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED,
CALIFORNIA, APPROVING A Community Development Block Grant (CDBG)
LOAN TO MERCED GATEWAY INVESTORS II, LP, IN THE PRINCIPAL
AMOUNT OF \$ \$370,590, APPROVING AND AUTHORIZING THE EXECUTION
OF A LOAN AGREEMENT, REGULATORY AGREEMENT, SUBORDINATION
AGREEMENT AND RELATED LOAN DOCUMENTS, AND AUTHORIZING
CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH**

WHEREAS, pursuant to City Council action of _____ 2018 the City of Merced (the "City"), approved the execution of a City Loan Commitment Agreement dated July 17, 2017 (the "CLCA") with Merced Gateway Investors II, LP (the "Developer") which, among other things, provided for certain financial assistance in the form of loans from the City to the Developer; and,

WHEREAS, pursuant to the CLCA, the City agreed to make a loan in the amount of Three Hundred and Seventy Thousand Five Hundred and Ninety Dollars (\$370,590) (the "CDBG Loan") to the Developer to finance the construction of a multi-family affordable residential rental project (the "Project") on the Site; and

WHEREAS, in consideration for the CDBG Loan, the Project is to consist of fifty (50) units, of which thirty-nine (39) units shall be restricted for occupancy by households with incomes at or below Sixty percent (60%) of the Area Median Income ("AMI"), ten (10) units shall be restricted for occupancy for homeless veteran families, and one (1) manager's unit shall be restricted for occupancy by households with income at or below one hundred twenty percent (120%) of the AMI, for a period of fifty-five (55) years; and

WHEREAS, the City Council of the City, with the aid of its staff, has reviewed the documentation related to the HOME Loan, which documentation is on file with City Clerk of the City; and

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 (B-17-MC-06-0044) under the Community Development and Block Grant (CDBG) and administered by the

U.S. Department of Housing and Urban Development ("HUD") (14.218-Entitlement Grant) with a Federal Award Date of September 22, 2017; and,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City hereby approves and authorizes the CDBG Loan in the amount of Three Hundred Seventy Thousand Five Hundred and Ninety Dollars (\$370,590) to Developer, to be funded from grant proceeds of the CDBG Program, all in accordance with the terms and conditions of the CDBG Loan Agreement. The CDBG Loan is also subject to terms and provisions of the Law, the Standard Agreement and all applicable rules and regulations applicable to the CDBG Program.

SECTION 2. The City hereby approves and authorizes the execution of the CDBG Loan Agreement, substantially in the form presented at this meeting and on file with the City Clerk of the City, with such revisions, amendments and completions as shall be approved by the Mayor, the City Manager, the Finance Director or the City Clerk of the City, and each of them, and any designee of any of them (each, an "Authorized Officer") with the advice of the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof by an Authorized Officer.

SECTION 3. The CDBG Loan will be evidenced by a Note (the "CDBG Note") executed by the Developer in favor of the City and delivered concurrently with the execution of the CDBG Loan Agreement. Repayment of the CDBG Note will be secured by the Deed of Trust and Security Agreement (the "CDBG Trust Deed"), covering the Site and the Project. The City hereby approves the CDBG Note and the CDBG Trust Deed substantially in the forms presented at this meeting and on file with the City Clerk of the City, with such revisions, amendments and completions as shall be approved by an Authorized Officer. The Developer shall execute the CDBG Trust Deed in favor of Placer Title Insurance Company as Trustor in trust for the benefit of City and deliver it to escrow for recordation.

SECTION 4. The City hereby approves and authorizes the execution of that certain (a) Regulatory Agreement and Declaration of Restrictive Covenants

(the "CDBG Regulatory Agreement"), by and between the City and the Developer, (b) Agreement Containing Covenants Affecting Real Property (the "CDBG Covenant Agreement") and (c) Notice of Affordability Restrictions on Transfer of Property (the "CDBG Notice"), substantially in the forms presented at this meeting and on file with the City Clerk of the City, with such revisions, amendments and completions as shall be approved by an Authorized Officer with the advice of the City Attorney, such approval to be conclusively evidenced by the execution and delivery thereof by an Authorized Officer. The City Clerk shall deliver the CDBG Regulatory Agreement, the CDBG Covenant Agreement and the CDBG Notice to escrow for recordation.

SECTION 5. The City hereby approves the subordination of the CDBG Loan to the CSCDA Loans to pursuant to the terms and provisions of that certain Subordination Agreement by and among _____, as agent for CSCDA, Developer and the City (the "Subordination Agreement").

SECTION 6. Any one of the Authorized Officers, and each of them, is hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable, in order to consummate the CDBG Loan and otherwise to effectuate the purposes of this Resolution and the transactions contemplated hereby.

SECTION 7. The City Clerk shall certify as to the adoption of this Resolution, which shall be in full force and effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Merced, at a regular meeting held on the _____ day of _____ 2018, by following called vote:

AYES Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED


BY _____
Mayor

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM

BY:  5-16-2018
City Attorney Date

RESOLUTION 17-11

THE GOVERNING BOARD OF

CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING

The Board of Directors of Central Valley Coalition for Affordable Housing;

HEREBY AUTHORIZES CHRISTINA ALLEY AND/OR JENNIFER BERTUCCIO TO EXECUTE DOCUMENTS ON BEHALF OF THE CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING IN REGARDS TO MERCED GATEWAY INVESTORS II, L.P., A CALIFORNIA LIMITED PARTNERSHIP.

WHEREAS, Central Valley Coalition for Affordable Housing mission is to provide affordable housing to low/moderate income families. The Central Valley Coalition for Affordable Housing is the MGP of Merced Gateway Investors II, L.P., a California Limited Partnership.

WHEREAS, the Partnership desires to receive loans from the City of Merced and various other lenders to assist with the development of Gateway Terrace II Apartments development.

WHEREAS, the Corporation will be required to provide Lender with certain indemnifications and/or guarantees with respect to Loan ("Loan Documents");

WHEREAS, the Loan Documents provide for the execution by the Corporation, for itself and it is in the best interests of the Corporation to cause the Corporation to obtain the Loans, provide certain guaranties and/or indemnifications with respect to the Loan and to execute and deliver or cause the Corporation to execute and deliver the Loan Documents on behalf of being the MGP in the partnership;

WHEREAS, the Partnership is authorized to enter into and execute, as applicable, all guaranties, agreements, documents, assignments, mortgages and understandings to accomplish the acquisition and development by the Partnership of the Project, including (but, not limited to) all necessary loan Documents, construction documents, DDA documents, loan documents and other documents to be executed in connection therewith; and

IT IS NOW RESOLVED THAT the Central Valley Coalition for Affordable Housing authorizes Christina Alley, Chief Executive Officer, and/or Jennifer Bertuccio, Secretary, (acting alone) to do or perform to cause to be done or performed, in the name of and on behalf of the Corporation and in its own behalf, or otherwise, to execute and deliver such other notices, applications, requests, demands, directions, consents, approvals, orders, undertakings, amendments, further assurances, or other instruments of communication as may be necessary or appropriate in order to cause Corporation to carry into effect the intent of the foregoing resolutions; and

IT IS FURTHER RESOLVED THAT all actions taken by Christina Alley, Chief Executive Officer, and/or Jennifer Bertuccio, Secretary, (acting alone) to carry out the intent of the foregoing resolution, and his/her execution and delivery of such instruments and documents as they believe are necessary for that purpose, are hereby approved, ratified and confirmed in all respects.

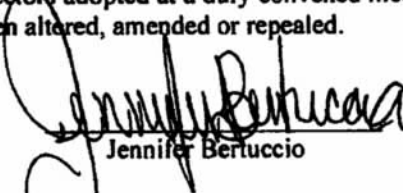
ATTACHMENT 5

PASSED AND ADOPTED THIS 27th day of April 2017, by the following vote:

AYES:6 NAYES: 0 ABSTAIN: 0 ABSENT: 1

The undersigned Jennifer Bertuccio Secretary of the Central Valley Coalition for Affordable Housing does hereby attest and certify that the foregoing is a true and full copy of a resolution of the Board of Directors adopted at a duly convened meeting on the date above-mentioned, which has not been altered, amended or repealed.

June 28, 2017



Jennifer Bertuccio

Greene, Kirk

From: Karle, Melanie
Sent: Thursday, August 02, 2018 4:12 PM
To: Greene, Kirk
Subject: FW: GT2 - Regulatory Agreement for CDBG

Here is the answer in regards to the Regulatory agreement.

Melanie

From: Trujillo, Julie
Sent: Thursday, August 02, 2018 11:54 AM
To: Hamilton, Mark <HamiltonM@cityofmerced.org>; Law, Faye <LawF@cityofmerced.org>; Richardson, Deborah <RichardsonDe@cityofmerced.org>; Karle, Melanie <karlem@cityofmerced.org>
Cc: Christina Alley <chris@centralvalleycoalition.com>; Mendonca, Dawn <mendoncad@cityofmerced.org>; McBride, Scott <McBrideS@cityofmerced.org>
Subject: RE: GT2 - Regulatory Agreement for CDBG

Thank you for the information Mark.

Julie A. Trujillo
Deputy Finance Officer
City of Merced
Finance Department
678 W. 18th Street
Merced, CA 95340
(209) 385-6883
trujilloj@cityofmerced.org

From: Hamilton, Mark
Sent: Thursday, August 02, 2018 8:53 AM
To: Law, Faye <LawF@cityofmerced.org>; Trujillo, Julie <TrujilloJ@cityofmerced.org>; Richardson, Deborah <RichardsonDe@cityofmerced.org>; Karle, Melanie <karlem@cityofmerced.org>
Cc: Christina Alley <chris@centralvalleycoalition.com>; Mendonca, Dawn <mendoncad@cityofmerced.org>; McBride, Scott <McBrideS@cityofmerced.org>
Subject: RE: GT2 - Regulatory Agreement for CDBG

Good Morning,

At the HUD All-Grantee meeting yesterday at HUD's Region 9 office in San Francisco, I was able to speak with HUD staff regarding Gateway Terrace 2 Project, and whether the CDBG Loan agreement for Gateway Terrace 2 also requires a CDBG regulatory agreement. HUD Staff informed me that the CDBG funding portion of the project does not need a regulatory agreement based on the fact the CDBG Agreement is funding only the infrastructure improvements.

These improvements benefit the area surrounding the project (Sewer/Sidewalk/ADA) site and the work is being performed either within the Utility easement or City Right of Way; not technically on the project site. The CDBG funding improvements may be a part of the overall project costs, but are not being used to finance the construction of the residential units.

Furthermore, since the CDBG funded infrastructure improvements are located within a disadvantage census tract, the infrastructure improvements are providing a benefit the area (LMA) and the surrounding residents which the "Project" just so happens to be located within.

With this information, the agreements should be allowed to be executed for the project. If you have any questions, please give me or Dawn Mendonca a call, thank you.

Regards,

Mark Hamilton
Housing Program Supervisor
(209) 385-6863 – Main
(209) 388-8989 – Direct

From: Hamilton, Mark
Sent: Friday, July 27, 2018 3:37 PM
To: 'Christina Alley' <chris@centralvalleycoalition.com>
Cc: Law, Faye <LawF@cityofmerced.org>; Levesque, Jennifer <LevesqueJ@cityofmerced.org>
Subject: RE: GT2 - Regulatory Agreement for CDBG

Okay, thank you...

Regards,

Mark Hamilton
Housing Program Supervisor
(209) 385-6863 – Main
(209) 388-8989 – Direct

From: Christina Alley <chris@centralvalleycoalition.com>
Sent: Friday, July 27, 2018 3:36 PM
To: Hamilton, Mark <HamiltonM@cityofmerced.org>
Cc: Law, Faye <LawF@cityofmerced.org>; Levesque, Jennifer <LevesqueJ@cityofmerced.org>
Subject: RE: GT2 - Regulatory Agreement for CDBG

I'm double checking still the regs so that 100% accurate I just want to make sure they have made no changes

From: Hamilton, Mark [<mailto:HamiltonM@cityofmerced.org>]
Sent: Friday, July 27, 2018 3:34 PM
To: Christina Alley <chris@centralvalleycoalition.com>
Cc: Law, Faye <LawF@cityofmerced.org>; Levesque, Jennifer <LevesqueJ@cityofmerced.org>
Subject: RE: GT2 - Regulatory Agreement for CDBG

Good Afternoon,

Thank you for your response regarding the fiscal agent for the project.

One more item will need be answered before the agreements can be finalized. Your assistance would be greatly appreciated answering Finance's question regarding the regulatory agreement for CDBG Loan portion of GT2 development? If the response below is correct (highlighted), please reply to my email confirming my response. If my

response is incorrect, please reply with an alternative response for the project. Once we have either a confirmation or an explanation, we will be able to finalize all the GT2 loan agreements. Thank you for your assistance...

Regards,

Mark Hamilton
Housing Program Supervisor
(209) 385-6863 – Main
(209) 388-8989 – Direct

From: Hamilton, Mark
Sent: Wednesday, July 25, 2018 8:11 AM
To: 'Christina Alley' <chris@centralvalleycoalition.com>
Cc: Law, Faye <LawF@cityofmerced.org>
Subject: RE: GT2 - Regulatory Agreement for CDBG
Importance: High

Good Morning,

- We are trying to confirm the CDBG loan agreements for GT2, can you please confirm the reason for why there is not a regulatory agreement. My thoughts are because there are no units tied to the CDBG agreement, if this is the case, please confirm!

Regards,

Mark Hamilton
Housing Program Supervisor
(209) 385-6863 – Main
(209) 388-8989 – Direct

From: Hamilton, Mark
Sent: Monday, July 16, 2018 5:27 PM
To: Christina Alley <chris@centralvalleycoalition.com>
Subject: RE: GT2 - Regulatory Agreement for CDBG

Is it because there are no units tied to the CDBG loan like there is for the CHDO and Loans?!? Just curious, our finance department is inquiring.

Regards,

Mark Hamilton
Housing Program Supervisor
(209) 385-6863 – Main
(209) 388-8989 – Direct

From: Hamilton, Mark
Sent: Monday, July 16, 2018 5:18 PM
To: 'Christina Alley' <chris@centralvalleycoalition.com>
Subject: GT2 - Regulatory Agreement for CDBG

Good Afternoon,

After looking at the completed loan package for Gateway Terrace 2; the HOME and CHDO loans have a regulatory agreement and the CDBG loan does not have a regulatory agreement. Could you tell me why CDBG does not have a regulatory agreement included.

Regards,

Mark Hamilton
Housing Program Supervisor
(209) 385-6863 – Main
(209) 388-8989 – Direct