DEPOSIT AND REIMBURSEMENT AGREEMENT

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT is made and entered into this _____ day of _____, 2024, by and between the City of Merced, a California Charter Municipal Corporation ("City") and MCYL1, LLC, a Delaware Limited Liability Company, whose address of record is 10561 W Highway 140, Atwater, CA 95301 ("Developer").

WHEREAS, Developer desires to develop a mixed use project on approximately 734 acres and to annex approximately 1,171 acres, generally located at the northwest and northeast corners of G Street and Old Lake Road (hereinafter referred to as the "Project"); and

WHEREAS, Developer desires to reimburse City for all of the costs and expenses associated with assessing the environmental impacts of said Project under the California Environmental Quality Act ("CEQA").

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

1. REIMBURSEMENT. Without regard to the outcome or adequacy thereof, and without offset for any reason, Developer agrees to reimburse City for all actual fees, costs, and expenses of a certain contract entered into or to be entered into between City and De Novo Planning Group (the "Consultant") relating to the environmental review of the proposed Project under CEQA, subject to the condition that Developer must have reviewed and approved Consultant's proposal and any modifications to that proposal to be liable for fees, costs and expenses under such contract with Consultant. City will require Consultant to prepare a proposal that includes a detailed scope of work and estimate of fees, costs, and expenses. City shall submit Consultant's proposal to Developer for review and approval, and such approval by Developer shall not be unreasonably withheld, conditioned, or delayed. It is understood that City would not have engaged Consultant had Developer not made an express promise and guarantee to pay the fees, costs, and expenses related thereto. If Consultant later seeks modifications to its proposal, including, but not limited to, an increased budget authorization, City shall submit any such requested modification to Developer for review and approval, and such approval by Developer shall not be unreasonably withheld, conditioned, or delayed.

A. With regard to the aforementioned contract with Consultant, Developer shall deposit with the City the total estimated cost of Consultant's services, which equals the sum of Three Hundred Forty-Eight Thousand Six Hundred Ten Dollars ($348,610.00). Within thirty (30) days of execution of this Agreement, the Developer shall deposit with the City the first of four equal installments of Eighty-Seven Thousand One Hundred Fifty-Two Dollars and 50 Cents ($87,152.50) with the second third, and fourth installments of Eighty-Seven Thousand One Hundred Fifty-Two Dollars and 50 Cents ($87,152.50) due within ninety (90) days, one hundred twenty (120) days, and one hundred eighty (180) days of execution of this Agreement respectively. City shall apply this deposit to fees, costs, and expenses under its contract with Consultant and shall refund to Developer any unspent funds upon termination of this Agreement. In the event the aforementioned amount ($348,610.00) is amended or otherwise adjusted in the contract with the Consultant, Developer agrees to similarly amend its reimbursement obligation hereunder with the intent that the City will at all times be reimbursed for all actual fees, costs, and expenses under said contract with the Consultant, subject to the condition that Developer must have reviewed and approved any modifications to Consultant's proposal to be liable for resultant fees, costs, and expenses under the contract with Consultant. In the event the contract with the Consultant terminates, the Developer will only be responsible for its pro-rata share of the Consultant's cost to the date of termination.

B. In addition to the Consultant time spent on preparing the environmental impact report, City staff will spend considerable time administering the Consultant contract. Under City Council Resolution #98-31, also known as the "Planning and Development Fee Schedule," the management fee for environmental review reports is ten percent (10%) of the total environmental impact review cost. Pursuant to said Schedule, Developer hereby agrees to deposit within thirty (30) days of the mutual execution of this Agreement, the additional sum of Thirty-Four Thousand Eight Hundred Sixty One Dollars ($34,861.00) to be applied toward the management fee for City staff time administering the preparation of an environmental document by the Consultant.

2. The Developer acknowledges that the above-referenced contract with Consultant is being entered into by City as an accommodation to the Developer to facilitate evaluation of the Developer's Project and does not guarantee any particular result or outcome. The Developer further acknowledges and agrees that it shall have no control over the work product of Consultant, and that its payment of the above sums is not dependent thereon. The Developer also acknowledges

and agrees that failure of the Developer to make payments when due shall be grounds for City to suspend work and/or cancel said contract.

3. The Developer reserves the right to provide a performance bond on behalf of Consultant, subject to Consultant's consent, and at the Developer' sole expense.

4. The Developer shall have the right to utilize the reports and work product of Consultant in connection with the proposed Project.

5. No application for any project from the Developer shall be considered for approval until the above-referenced contract with Consultant is completed. Nothing herein is intended to suggest any result upon the hearing of any such application thereon. The City retains its authority to grant, deny, or condition any and all projects and applications.

6. This Agreement shall terminate once Developer has reimbursed the City for all actual fees, costs, and expenses under the City's contract with Consultant, as specified in this Agreement.

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

8. In the event that either City or the Developer shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

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

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

11. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

12. This Agreement constitutes the complete, entire, exclusive, and final agreement and understanding between the parties as to the subject matter herein, superseding all negotiations, prior discussions, and preliminary agreements or contemporaneous understandings, written or oral.

13. 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.

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

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

CITY OF MERCED
A California Charter Municipal Corporation

BY:_____
D. Scott McBride
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY:_____
Assistant/Deputy City Clerk

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

BY: Craig Cornwell 4/15/24
City Attorney Date

ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY:_____
Verified by Finance Officer

MCYL1, LLC, A Delaware Limited Liability Company

BY:_____
Michael D. Gallo on behalf of and as Member Manager of Western Assets, LLC (Manager of MCYL1, LLC)

ITS: Member Manager of Western Assets, LLC (Manager of MCYL1, LLC)

Taxpayer I.D. No. 99-2344260

ADDRESS: 10561 W. Highway 140
Atwater, CA 95301

TELEPHONE: 209-394-7984, ext 1251

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