

RECORDING REQUESTED BY:

City of Merced, A California Charter
Municipal Corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 W. 18th Street
Merced, CA 95340

Exempt Recording Per Gov't Code Section 6103

(Above for Recorder's Use Only)

NON-EXCLUSIVE EASEMENT AGREEMENT

This NON-EXCLUSIVE EASEMENT AGREEMENT (this "Agreement") is entered into as of this ___ day of _____, 2016 by MERCED LOFTS, LLC, a California Limited Liability Company ("Merced Lofts") and CITY OF MERCED, a California Charter Municipal Corporation ("City").

WITNESSETH:

WHEREAS, City is the owner of certain real property (the "City Parcel") situated in the City of Merced, County of Merced, State of California legally described on Exhibit "A;" and

WHEREAS, Merced Lofts is the owner of certain real property (the "Lofts Parcel"), situated in the City of Merced, County of Merced, State of California, legally described on Exhibit "B," attached hereto and incorporated herein by this reference; and

WHEREAS, the City Parcel and the Lofts Parcel are adjoining parcels; and

WHEREAS, City desires to grant to Merced Lofts, and Merced Lofts (the "Benefited Parcel") desires to accept from City, a non-exclusive easement in portions of the City Parcel (the "Burdened Parcel") for access, ingress, and egress purposes, to and from the alley adjacent to City Parcel for common use of a commercial rubbish receptacle; for loading and unloading; for surface drainage; for handicap parking; and for utility service connections, facilities, improvements, and equipment so long as said easement is granted to the Benefited Parcel and not to a public utility.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, City and Merced Lofts do hereby agree as follows:

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms shall, as used in this Agreement, have the following meanings:

ARTICLE I DEFINITIONS

Section 1.1 Party

“Party” means “Merced Lofts” or “City” and “Parties” means both of the foregoing, or any successor Person(s) acquiring any interest of a Party in or to any portion of such Party’s Parcel.

Section 1.2 Person

“Person” or “Persons” means individuals, partnerships, firms, associations, corporations, and any other form of business or governmental organization or entity, or one or more of them, as the context may require.

Section 1.3 Easement Areas

The “Easement Area” shall mean and refer to such portions of the Grantor’s (as defined below) Parcel as are now or hereafter from time to time set aside or intended to be set aside, maintained and authorized for the passage, access, ingress, and egress of vehicles and for pedestrian traffic incidental thereto.

Section 1.4 Grantor; Grantee

(a) A Party granting an easement is called the “Grantor,” it being intended that the grant shall thereby bind and include not only such Party but also its successors and assigns.

(b) A Party to whom the easement is granted is called the “Grantee,” it being intended that the grant shall benefit and include not only such Party but its

successors and assigns and its occupants or permittees, provided that no such use of the easement in excess of the use contemplated at the date of the creation of such easement shall occur.

(c) The word “in” with respect to an easement granted “in” a particular Parcel means, as the context may require, “in,” “to,” “on,” “over,” “through,” “upon,” “across,” and “under” or any one or more of the foregoing.

(d) The grant of any easement by a Grantor shall bind and burden its Parcel which shall, for the purpose of this Agreement, be deemed to be, the burdened Parcel; provided, however, that where only a portion of the Parcel is bound and burdened by the easement, only that portion shall be deemed to be the burdened Parcel.

(e) The grant of an easement to a Grantee shall benefit and bind its Parcel which shall, for the purpose of this Agreement, be deemed to be the benefited Parcel; provided, however, that where only a portion of the parcel is so benefited, only that portion shall be deemed to be the benefited Parcel.

(f) All easements granted herein are non-exclusive and are irrevocable and perpetual.

(g) All easements herein shall be easements appurtenant and not easements in gross.

ARTICLE 2 EASEMENT

Section 2.1 Grant of Easement

City hereby grants to Merced Lofts a non-exclusive easement for access, ingress, and egress across the City Parcel.

Section 2.2 Acceptance of Easement

Merced Lofts hereby accepts the grant of the non-exclusive easement granted by the City and agrees to be bound by the terms and conditions of this Agreement.

Section 2.3 Use of Easement Areas

The purpose of this Agreement is to provide only for vehicular and pedestrian access for ingress and egress to and from Lofts Parcel through and across the City Parcel in the Easement Area, to and from adjacent alley. Said Easement may also be used for common use of a commercial rubbish receptacle; for loading and unloading; for surface drainage; for handicapped parking; and for utility service connections, facilities, improvements, and equipment so long as said easement is granted to the Benefited Parcel and not a public utility. Merced Lofts agrees for itself and its agents, employees, and contractors to use the Easement Area in a manner fully complying with all laws and other legal requirements. City reserves the right to limit and regulate driving and walking in a commercially reasonable manner in the Easement Area. Notwithstanding anything in this Agreement to the contrary, the Parties do not intend that this Agreement permit or provide for reciprocal parking for the City Parcel and/or the Lofts Parcel.

Section 2.4 Limitation of Easement.

This Agreement is intended for the sole use of the present and future occupants, tenants, employees, invitees, permittees, and customers of the Merced Lofts and is not intended, nor shall it be construed, to create any rights in or for the benefit of the general public.

Section 2.5 Successors

This Agreement shall run with the land as respects burdens created herein and shall be binding upon all Persons having or acquiring an interest in the City Parcel, Lofts Parcel, or any portions of such Parcels. The benefits of this Agreement shall inure to the benefit of the respective "Parties" and successor "Parties" as herein defined.

Section 2.6 Covenants Run with the Land

It is intended that the covenants, easements, agreements, promises, and duties of each Party as set forth in this Agreement shall be construed as covenants and not

as conditions, and that, to the fullest extent legally possible, all such covenants shall run with the land and constitute equitable servitudes as between the Parcel of the respective covenantor, as the servient tenement, hereto for referenced as the Burdened Parcel and the Parcel of the respective covenantee, as the dominant tenement, hereto for as the Benefited Parcel binding upon the servient tenement and benefiting the dominant tenement; provided, however, that such benefits shall be enforceable only by the Party as to the dominant Parcel.

Section 2.7 Failure To Perform.

If either party hereto fails, refuses or neglects to perform adequately its duties hereunder or to honor its obligations hereunder, the other party may, in addition to whatever rights it may be entitled to pursue at law or in equity, give written notice of such failure and if the party receiving such notice fails to rectify or cure such failure within a commercially reasonable time as may be set forth in such notice, the other part may rectify or cure such failure and the noncomplying party shall promptly, upon presentation of an invoice therefore, reimburse the performing party for the costs incurred by it in performing such work, plus an additional ten percent (10%) of the total cost thereof for overhead and administrative purposes.

Section 2.8 Amendment.

This Agreement may not be amended, modified, terminated, or released without the prior written consent of all of the parties hereto, or the successors in interest, respectively, to the City Parcel and the Lofts Parcel.

Section 2.9 Severability.

If any term or provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any of the remaining terms and provisions of this Agreement, and the same shall continue to be effective to the fullest extent permitted by law.

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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: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

(Signatures Continued on Next Page)

MERCED LOFTS, LLC
A California Limited Liability Company

BY: _____
Jonathan A. Tolkin

Title: _____

ADDRESS: _____

TELEPHONE: _____

FAX: _____

E-MAIL: _____

Exhibit A

Exhibit B

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)
) ss.
County of Merced)

On _____, 2016, 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)

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)
) ss.
County of Merced)

On _____, 2016, 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)